Original

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

We the People)
Eddie L. Andrews)
Rodney Class)
Angela S. Andrews)
Richard Andrews)
Carl Weston)
Dwight L. Class)
Maria Janet Moffit)
Sherwood T. Rodrigues)
William McDonald)
John & Jane Doe)
Plaintiffs,)
vs.)
)
)
UNITED STATE'S)
State Justice Institute, Official Capacity)
State of Oklahoma,)
W. A. Drew Edmondson , individual)
State of Ohio,)
Jim Petro, individual)
Betty Montgomery, individual)
Bob Taft, individual)
Deborah J. Groom, individual)
William F. Downes, individual)
Marsha J. Pechman, individual)
Robert J. Bryan, individual)
Lawrence K. Karlton, individual)
Franklin D. Burgess, individual)
Joe Heaton, indivudal)
First National Bank, Official)
State of Washington,)
Rob McKenna, individual)
State of California ,)
Bill Lockyer , individual)
State of Texas,)
Greg Abbott, individual)
State of North Carolina,)
Roy Cooper, individual)
CNA Surety, Official)
Westfield Insurance, Official)
Gretchen C.F. Shappert, individual)
John & Jane Doe)
Defendants,)

FILED
SEP 6 2006
Phil Lombardi, Clerk
U.S. DISTRICT COURT

06CV 460 TCK-PJC

Case No:_____
CLASS ACTION

DUE PROCESS

Substantive Due Process/ Racketeering/ Fraud Upon The Court/ and violation of the Separation of Powers against them in they're natural persons/demand trail by Jury

COME NOW We the People Eddie L. Andrews, Rodney Class, Angela S. Andrews, Richard Andrews, Carl Weston , Dwight L. Class, Maria Janet Moffit ,Sherwood T. Rodrigues ,John & Jane Doe has had.

Substantive Due Process and violation of separation of powers against them in they're natural persons and other violations listed above.

STATEMENT OF JURISDICTION

`The underlying action was brought seeking relief under the Constitution of the United States, particularly the First, Fourth, Fifth, Sixth, Ninth, and Fourteenth Amendments to the Constitution of the United States, and under the laws of the United States, particularly the Civil Rights Act, Title 42 U.S.C. §§ 1983 and 1985. This action also arises under the laws of the United States, particularly Deprivation of Rights under Color of Law, Title 18, U.S.C., § 242. This action also arises under the laws of the United States, particularly Conspiracy against Rights, Title 18, U.S.C., § 241. This action also arises under the laws of the United States, particularly The Racketeer Influenced and Corrupt Organizations (RICO) Act, 18 U.S.C., §§ 1961-68 (1998). This action also arises under the laws of the United States, particularly The Child Abuse and Neglect Accountability Act of 1993, 42 U.S.C., §§ 107(b), 5106a(b)(1) is amended.

The Plaintiff's is before the court pro-se (sui juris) and expects his or her Constitutional Rights to be upheld and that his or her rights are not deprived nor due process of Law violated.

This petition shall not be dismissed for lack of form or failure of process.

"and be it further enacted .That no summons, writ, declaration, return, process, judgement, or other proceeding in civil cases in any of the courts of the United States, shall be abated, arrested, quashed or reversed, for any defect or want of form, but the said courts respectively shall proceed and give judgement according as the right of the right of the cause and matter in law shall appear unto them, without regarding any imperfections, defect or want of form in such writ ,declaration, or other pleading ,returns process judgement, or course of proceeding whatsoever, except those only in case of demurrer , which the party demurring shall specially sit down and express together with his or her demurrer as the cause thereof. And the said courts respectively shall and may, by virtue of this act, from time to time, amend all and every such imperfections, defects and wants of form, other than those only which the party demurring shall express as aforesaid, and may at any , time, permit either of the parties to amend any defect in the process of pleadings upon such conditions as the said courts respectively shall in their discretion, and by their discretion, and by their discretion ,and by their rules prescribe (a)" Judiciary Act of September 24,1789, Section342,

FIRST CONGRESS, Sess.1 ch.20, 1789

This action was filed in the United States District Court for the District of Oklahoma pursuant to the provisions of Title 28 U.S.C. §§ 1331 and 1343, governing civil actions arising under the laws of the United States. Venue was properly placed in this District Court pursuant to Title 28 U.S.C. § 1291.The Parties shall have Nature and Cause to state a verifiable trespass and injury by defendants engaged in practices in violation of the Constitutional Separation of Powers, Substantive Due Process, Perjury of Office and *Breach of Condition* for qualification of office and assistance for Federally Assisted Programs. The defendants in furtherance of this conspiracy,

committed, attempted to commit, did commit and solicit crimes as charged, including violations of Protected Rights, Civil Liberties, personal freedoms and privacy.

Statement of venue

For the various forms of relief that the Plaintiffs seek, and given full consideration that this case entails multiple sets of fairly complex circumstances, with various and numerous causes of action contained thereunder, jurisdiction and venue over all subject matters herein are properly had and held within this Honorable Court, and the same matters arising, under any or all of the following provisions of relevant federal law:

a) Article III, Section 2, of the United States Constitution . Regarding issues risen under the Constitution, laws, or treaties of the United States;

b) Article IV, Section 2, of the United States Constitution. Regarding equal protection of all privileges and immunities of citizens amongst the several States;

c) Article VI of the United States Constitution . regarding the binding of judges in every State Under the supreme law of the land, and which same consists of the Constitution, laws, and treaties of the United States; Venue is appropriate in the UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OKLAHOMA as the infractions as the wrongs complained of occurred in the United States..

Statement of *in personam jurisdiction*

This court has jurisdiction, subject to complaint service, over all respondents as all respondents are known to have committed criminal acts within the geographic boundaries of the United States of America.

Notice to the court

This petition does not delve into the wisdom, need, or desirability of legislative enactments occurring at Oklahoma State Statute Five, Chapter one, App. One, Articles One and Two. This petition illustrates that Oklahoma State Statute Five, Chapter One, App. One, Articles One and Two strike at the very fiber of constitutional prohibitions known as the *separation of powers.* Congress, in enacting civil racketeering laws intended that a person such as We the People are *private attorney generals.* See Agency Holding Corp. v. Malley-Duff & Associates, 107 **SUPREME COURT**, 2759, 483 US. 143, 151 (1987) and Rotella v. Wood et al, 528 U.S. 549 (2000). This complaint is a compelling testimony for want of a competent United States Attorney General. Also note the **Dick Act of 1902**. The Dick Act of 1902 also known as the Efficiency of Militia Bill H.R. 11654, of June 28, 1902 invalidates all so-called gun-control laws. It also divides the militia into three distinct and separate entities. The three classes H.R. 11654 provides for are the organized militia, henceforth known as the National Guard of the States. Territory and District of Columbia, the unorganized militia and the regular army. The militia encompasses every able-bodied male between the ages of 18 and 45. All members of the unorganized militia have the absolute personal right and 2d Amendment right to keep and bear arms of any type, and as many as they can afford to buy. The Dick Act of 1902 cannot be repealed; to do so would violate bills of attainder and ex post facto laws which would be yet another gross violation of the U.S. Constitution and the Bill of Rights. The President of the United States has zero authority without violating the Constitution to call the National Guard to serve outside of their State borders. The National Guard Militia can only be required by the National Government for limited purposes specified in the Constitution (to uphold the laws of the Union; to suppress insurrection and repel invasion). These are the only purposes for which

the General Government can call upon the National Guard. Attorney General Wickersham advised President Taft, "The Organized Militia (The National Guard) can not be employed for offensive warfare outside the limits of the United States." The Honorable William Gordon, in a speech to the House on Thursday, October 4, 1917, proved that the action of President Wilson in ordering the Organized Militia (the National Guard) to fight a war in Europe was so blatantly unconstitutional that he felt Wilson ought to have been impeached. During the war with England an attempt was made by Congress to pass a bill authorizing the president to draft 100,000 men between the ages of 18 and 45 to invade enemy territory, Canada. The bill was defeated in the House by Daniel Webster on the precise point that Congress had no such power over the militia as to authorize it to empower the President to draft them into the regular army and send them out of the country. The fact is that the President has no constitutional right, under any circumstances, to draft men from the militia to fight outside the borders of the USA, and not even beyond the borders of their respective states. Today, we have a constitutional LAW which still stands in waiting for the legislators to obey the Constitution which they swore an oath to uphold. Charles Hughes of the American Bar Association (ABA) made a speech which is contained in the Appendix to Congressional Record, House, September 10, 1917, pages 6836-6840 which states: "The militia, within the meaning of these provisions of the Constitution is distinct from the Army of the United States." In these pages we also find a statement made by Daniel Webster, "that the great principle of the Constitution on that subject is that the militia is the militia of the States and of the General Government; and thus being the militia of the States, there is no part of the Constitution worded with greater care and with more scrupulous jealousy than that which grants and limits the power of Congress over it." "This limitation upon the power to raise and support armies clearly establishes the intent and purpose of the framers of the Constitution to limit the

power to raise and maintain a standing army to voluntary enlistment, because if the unlimited power to draft and conscript was intended to be conferred, it would have been a useless and puerile thing to limit the use of money for that purpose. Conscripted armies can be paid, but they are not required to be, and if it had been intended to confer the extraordinary power to draft the bodies of citizens and send them out of the country in direct conflict with the limitation upon the use of the militia imposed by the same section and article, certainly some restriction or limitation would have been imposed to restrain the unlimited use of such power." The Honorable William Gordon Congressional Record, House, page 640 1917. See also CLAYTON ANTITRUST ACT of 1914 And the False Claim Act of the State of Ohio SB 39 ORC 109.45-49 and the Federal False Claim act TITLE 31> SUBTITLE III>CHAPTER 37>SUBCHAPTER III> § 3729. See also Hazel-Atlas Glass which still provides the doctrinal standard for what is meant by "a fraud upon the court." The instance involved Hartford-Empire's submission to the Patent Office of a trade journal article by a purportedly disinterested expert in support of its patent application . 322 U.S. 240. The article professed Hartford-Empire's glass manufacturing technology as, "a remarkable advance in the art of fashioning glass by machine" Id. After the patent was issued and later enforced against Hazel-Atlas in an infringement proceeding. Hazel-Atlas learned that the article had actually been written by Hartford-Empire's "officials and attorneys" id, who had paid the expert to undersign the article. 322 U.S. at 244.Robinson v. Audi Aktiengesellschaft, 56 F.3d 1259 (10th Cir. 1995), cert. Denied, 516 U.S. 1045 (1996), "*whatever else it embodies, [fraud on the court] requires a showing that one has acted with an intent to deceive or defraud the court*"

Prefection

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AMERICAN CIVIL LIBERTIES UNION; AMERICAN CIVIL LIBERTIES UNION FOUNDATION; AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN; COUNCIL ON AMERICAN-ISLAMIC RELATIONS; COUNCIL ON AMERICAN ISLAMIC RELATIONS MICHIGAN; GREENPEACE, INC.; NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS; JAMES BAMFORD; LARRY DIAMOND; CHRISTOPHER HITCHENS; TARA MCKELVEY; and BARNETT R. RUBIN,

Plaintiffs,

v.

NATIONAL SECURITY AGENCY / CENTRAL SECURITY SERVICE; and LIEUTENANT GENERAL KEITH B. ALEXANDER, in his official capacity as Director of the National Security Agency and Chief of the Central Security Service,

Defendants.

Case No. 06-CV-10204

Hon. Anna Diggs Taylor

_____/

MEMORANDUM OPINION

I. Introduction

This is a challenge to the legality of a secret program (hereinafter "TSP") undisputedly inaugurated by the National Security Agency (hereinafter "NSA") at least by 2002 and continuing today, which intercepts without benefit of warrant or other judicial approval, prior or subsequent, the international telephone and internet communications of numerous persons and organizations

within this country. The TSP has been acknowledged by this Administration to have been authorized by the President's secret order during 2002 and reauthorized at least thirty times since.[1]

Plaintiffs are a group of persons and organizations who, according to their affidavits, are defined by the Foreign Intelligence Surveillance Act (hereinafter "FISA") as "U.S. persons."[2] They conducted regular international telephone and internet communications for various uncontestedly legitimate reasons including journalism, the practice of law, and scholarship. Many of their communications are and have been with persons in the Middle East. Each Plaintiff has alleged a "well founded belief" that he, she, or it, has been subjected to Defendants' interceptions, and that the TSP not only injures them specifically and directly, but that the TSP substantially chills and impairs their constitutionally protected communications. Persons abroad who before the program spoke with them by telephone or internet will no longer do so.

Plaintiffs have alleged that the TSP violates their free speech and associational rights, as guaranteed by the First Amendment of the United States Constitution; their privacy rights, as guaranteed by the Fourth Amendment of the United States Constitution; the principle of the Separation of Powers because the TSP has been authorized by the President in excess of his Executive Power under Article II of the United States Constitution, and that it specifically violates the statutory limitations placed upon such interceptions by the Congress in FISA because it is conducted without observation of any of the procedures required by law, either statutory or Constitutional.

Before the Court now are several motions filed by both sides. Plaintiffs have requested a

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[1] Available at http://www.white-house.gov//news/releases/2005/12/20051219-2.html

[2] Pub. L. 95-511, Title I, 92 Stat 1976 (Oct. 25, 1978), codified as amended at 50 U.S.C. §§ 1801 *et seq.*

permanent injunction, alleging that they sustain irreparable damage because of the continued existence of the TSP. Plaintiffs also request a Partial Summary Judgment holding that the TSP violates the Administrative Procedures Act ("APA"); the Separation of Powers doctrine; the First and Fourth Amendments of the United States Constitution, and the statutory law.

Defendants have moved to dismiss this lawsuit, or in the alternative for Summary Judgment, on the basis of the state secrets evidentiary privilege and Plaintiffs' lack of standing.

II. State Secrets Privilege

Defendants argue that the state secrets privilege bars Plaintiffs' claims because Plaintiffs cannot establish standing or a *prima facie* case for any of their claims without the use of state secrets. Further, Defendants argue that they cannot defend this case without revealing state secrets. For the reasons articulated below, the court rejects Defendants' argument with respect to Plaintiffs' claims challenging the TSP. The court, however, agrees with Defendants with respect to Plaintiffs' data- mining claim and grants Defendants' motion for summary judgment on that claim.

The state secrets privilege is an evidentiary rule developed to prevent the disclosure of information which may be detrimental to national security. There are two distinct lines of cases covering the privilege. In the first line of cases the doctrine is more of a rule of "non-justiciability because it deprives courts of their ability to hear suits against the Government based on covert espionage agreements." *El-Masri v. Tenet*, 2006 WL 1391390 at 7 (E.D.Va., 2006). The seminal decision in this line of cases is *Totten v. United States* 92 U.S. 105 (1875). In *Totten*, the plaintiff brought suit against the government seeking payment for espionage services he had provided during the Civil War. In affirming the dismissal of the case, Justice Field wrote:

> The secrecy which such contracts impose precludes any action for their enforcement. The publicity produced by an action would itself

> be a breach of a contract of that kind, and thus defeat a recovery. *Totten*, 92 U.S. at 107.

The Supreme Court reaffirmed *Totten* in *Tenet v. Doe*, 544 U.S. 1, (2005). In *Tenet*, the plaintiffs, who were former Cold War spies, brought estoppel and due process claims against the United States and the Director of the Central Intelligence Agency (hereinafter "CIA") for the CIA's alleged failure to provide them with the assistance it had allegedly promised in return for their espionage services. *Tenet*, 544 U.S. at 3. Relying heavily on *Totten*, the Court held that the plaintiffs claims were barred. Delivering the opinion for a unanimous Court, Chief Justice Rehnquist wrote:

> We adhere to *Totten*. The state secrets privilege and the more frequent use of *in camera* judicial proceedings simply cannot provide the absolute protection we found necessary in enunciating the *Totten* rule. The possibility that a suit may proceed and an espionage relationship may be revealed, if the state secrets privilege is found not to apply, is unacceptable: "Even a small chance that some court will order disclosure of a source's identity could well impair intelligence gathering and cause sources to 'close up like a clam.'" (citations omitted). *Tenet*, 544 U.S. at 11.

The second line of cases deals with the exclusion of evidence because of the state secrets privilege. In *United States v. Reynolds*, 345 U.S. 1 (1953), the plaintiffs were the widows of three civilians who died in the crash of a B-29 aircraft. *Id.* at 3-4. The plaintiffs brought suit under the Tort Claims Act and sought the production of the Air Force's official accident investigation report and the statements of the three surviving crew members. *Id.* The Government asserted the states secret privilege to resist the discovery of this information, because the aircraft in question and those aboard were engaged in a highly secret mission of the Air Force. *Id.* at 4. In discussing the state secrets privilege and its application, Chief Justice Vinson stated:

> The privilege belongs to the Government and must be asserted by it;

> it can neither be claimed nor waived by a private party. It is not to be lightly invoked. There must be formal claim of privilege, lodged by the head of the department which has control over the matter, after actual personal consideration by that officer. The court itself must determine whether the circumstances are appropriate for the claim of privilege, and yet do so without forcing a disclosure of the very thing the privilege is designed to protect. *Reynolds,* 345 U.S. at 8.

The Chief Justice further wrote:

> In each case, the showing of necessity which is made will determine how far the court should probe in satisfying itself that the occasion for invoking the privilege is appropriate. Where there is a strong showing of necessity, the claim of privilege should not be lightly accepted, but even the most compelling necessity cannot overcome the claim of privilege if the court is ultimately satisfied that military secrets are at stake. *Reynolds,* 345 U.S. at 11.

The Court sustained the Government's claim of privilege, finding the plaintiffs' "necessity" for the privileged information was "greatly minimized" by the fact that the plaintiffs had an available alternative. *Reynolds,* 345 U.S. at 11. Moreover, the Court found that there was nothing to suggest that the privileged information had a "causal connection with the accident" and that the plaintiffs could "adduce the essential facts as to causation without resort to material touching upon military secrets." *Id.*

In *Halkin v. Helms,* 598 F.2d 1 (D.C.Cir.1978) (*Halkin I*), the District of Columbia Circuit Court applied the holding in *Reynolds* in a case in which the plaintiffs, Vietnam War protestors, alleged that the defendants, former and present members of the NSA, the CIA, Defense Intelligence Agency, the Federal Bureau of Investigation and the Secret Service engaged in warrantless surveillance of their international wire, cable and telephone communications with the cooperation of telecommunications providers. *Id.* at 3. The telecommunications providers were also named as defendants. *Id.* The plaintiffs specifically challenged the legality of two separate NSA surveillance

operations undertaken from 1967 to 1973 named operation MINARET and operation SHAMROCK.[3] *Id.* at 4.

The Government asserted the state secrets privilege and moved for dismissal for the following reasons: (1) discovery would "confirm the identity of individuals or organizations whose foreign communications were acquired by NSA"; (2) discovery would lead to the disclosure of "dates and contents of such communications"; or (3) discovery would "divulge the methods and techniques by which the communications were acquired." *Halkin,* 598 F.2d at 4-5. The district court held that the plaintiffs' claims against operation MINARET had to be dismissed "because the ultimate issue, the fact of acquisition, could neither be admitted nor denied." *Id.* at 5. The district court, however, denied the Government's motion to dismiss the plaintiffs' claims regarding operation SHAMROCK, because it "thought congressional committees investigating intelligence matters had revealed so much information about operation SHAMROCK that such a disclosure would pose no threat to the NSA mission." *Id.* at 10.

On appeal, the District of Columbia Circuit Court affirmed the district court's dismissal of the plaintiffs' claims with respect to operation MINARET but reversed the court's ruling with respect to operation SHAMROCK. In reversing the district court ruling regarding SHAMROCK, the circuit court stated:

> . . . we think the affidavits and testimony establish the validity of the state secrets claim with respect to both SHAMROCK and MINARET acquisitions; our reasoning applies to both. There is a "reasonable danger", (citation omitted) that confirmation or denial that a particular plaintiff's communications have been acquired would

[3]Operation MINARET was part of the NSA's regular intelligence activity in which foreign electronic signals were monitored. Operation SHAMROCK involved the processing of all telegraphic traffic leaving or entering the United States. *Hepting v. AT & T Corp* 2006 WL 2038464 (N.D.Cal.2006) quoting *Halkin.*

> disclose NSA capabilities and other valuable intelligence information to a sophisticated intelligence analyst. *Halkin,* 598 F.2d at 10.

The case was remanded to the district court and it dismissed the plaintiffs' claims against the NSA and the individuals connected with the NSA's alleged monitoring. *Halkin v. Helms,* 690 F.2d 977, 984 (D.C. Cir.1982) (*Halkin II*).

In *Halkin II,* 690 F.2d 977, the court addressed plaintiffs' remaining claims against the CIA, which the district court dismissed because of the state secrets privilege. In affirming the district court's ruling, the District of Columbia Circuit stated:

> It is self-evident that the disclosures sought here pose a "reasonable danger" to the diplomatic and military interests of the United States. Revelation of particular instances in which foreign governments assisted the CIA in conducting surveillance of dissidents could strain diplomatic relations in a number of ways-by generally embarrassing foreign governments who may wish to avoid or may even explicitly disavow allegations of CIA or United States involvements, or by rendering foreign governments or their officials subject to political or legal action by those among their own citizens who may have been subjected to surveillance in the course of dissident activity. *Halkin II,* 690 F.2d at 993.

Ellsberg v. Mitchell, 709 F.2d 51 (D.C. Cir.1983) was yet another case where the District of Columbia Circuit dealt with the state secrets privilege being raised in the defense of a claim of illegal wiretapping. In *Ellsberg,* the plaintiffs, the defendants and attorneys in the "Pentagon Papers" criminal prosecution brought suit when, during the course of that litigation, they discovered "that one or more of them had been the subject of warrantless electronic surveillance by the federal Government." *Id.* at 51. The defendants admitted to two wiretaps but refused to respond to some of the plaintiffs' interrogatories, asserting the state secrets privilege. *Id.* at 54. The plaintiffs sought an order compelling the information and the district court denied the motion, sustaining the Government's assertion of the state secrets privilege. *Id.* at 56. Further, the court dismissed the

plaintiffs' claims that pertained "to surveillance of their foreign communications." *Ellsberg v. Mitchell,* 709 F.2d at 56.

On appeal, the District of Columbia Circuit reversed the district court with respect to the plaintiffs' claims regarding the Government's admitted wiretaps, because there was no reason to "suspend the general rule that the burden is on those seeking an exemption from the Fourth Amendment warrant requirement to show the need for it." *Ellsberg,* 709 F.2d at 68. With respect to the application of the state secrets privilege, the court stated:

> When properly invoked, the state secrets privilege is absolute. No competing public or private interest can be advanced to compel disclosure of information found to be protected by a claim of privilege. However, because of the broad sweep of the privilege, the Supreme Court has made clear that "[i]t is not to be lightly invoked." Thus, the privilege may not be used to shield any material not strictly necessary to prevent injury to national security; and, whenever possible, sensitive information must be disentangled from nonsensitive information to allow for the release of the latter. *Ellsberg,* 709 F.2d at 56.

In *Kasza v. Browner,* 133 F.3d 1159 (9th Cir.1998), the plaintiffs, former employees at a classified United States Air Force facility, filed suit against the Air Force and the Environmental Protection Agency under the Resource Conservation and Recovery Act, alleging violations at the classified facility. *Id.* at 1162. The district court granted summary judgment against the plaintiffs, because discovery of information necessary for the proof of the plaintiffs' claims was impossible due to the state secrets privilege. *Id.* In affirming the district court's grant of summary judgment against one of the plaintiffs, the Ninth Circuit stated:

> Not only does the state secrets privilege bar [the plaintiff] from establishing her prima facie case on any of her eleven claims, but any further proceeding in this matter would jeopardize national security. No protective procedure can salvage [the plaintiff's] suit. *Kasza,* 133 F.3d at 1170.

The *Kasza* court also explained that "[t]he application of the state secrets privilege can have . . . three effects." *Kasza*, 133 F.3d at 1166. First, when the privilege is properly invoked "over particular evidence, the evidence is completely removed from the case." *Id.* The plaintiff's case, however, may proceed "based on evidence not covered by the privilege." *Id.* "If . . . the plaintiff cannot prove the *prima facie* elements of her claim with nonprivileged evidence, then the court may dismiss her claim as it would with any plaintiff who cannot prove her case." *Id.* Second, summary judgement may be granted, "if the privilege deprives the defendant of information that would otherwise give the defendant a valid defense to the claim." *Id.* Lastly, "notwithstanding the plaintiff's ability to produce nonprivileged evidence, if the 'very subject matter of the action' is a state secret, then the court should dismiss the plaintiff's action based solely on the invocation of the state secrets privilege." *Id.*

The Sixth Circuit delivered its definitive opinion regarding the states secrets privilege, in *Tenenbaum v. Simonini*, 372 F.3d 776 (6th Cir. 2004). In that case, the plaintiffs sued the United States and various employees of federal agencies, alleging that the defendants engaged in criminal espionage investigation of the plaintiff, David Tenenbaum, because he was Jewish. *Id.* at 777. The defendants moved for summary judgment, arguing that they could not defend themselves against the plaintiffs' "claims without disclosing information protected by the state secrets doctrine." *Id.* The district court granted the defendants' motion and the Sixth Circuit affirmed stating:

> We further conclude that Defendants cannot defend their conduct with respect to Tenenbaum without revealing the privileged information. Because the state secrets doctrine thus deprives Defendants of a valid defense to the Tenenbaums' claims, we find that the district court properly dismissed the claims. *Tenenbaum*, 372 F.3d at 777.

Predictably, the War on Terror of this administration has produced a vast number of cases,

in which the state secrets privilege has been invoked.[4] In May of this year, a district court in the Eastern District of Virginia addressed the state secrets privilege in *El-Masri v. Tenet*, 2006 WL 1391390, (E.D. Va. May 12, 2006). In *El Masri*, the plaintiff, a German citizen of Lebanese descent, sued the former director of the CIA and others, for their alleged involvement in a program called Extraordinary Rendition. *Id.* at 1. The court dismissed the plaintiff's claims, because they could not be fairly litigated without the disclosure of state secrets.[5] *Id.* at 6.

In *Hepting v. AT & T Corp.*, 2006 WL 2038464, (E.D. Cal. June 20, 2006), which is akin to our inquiry in the instant case, the plaintiffs brought suit, alleging that AT & T Corporation was collaborating with the NSA in a warrantless surveillance program, which illegally tracked the domestic and foreign communications and communication records of millions of Americans. *Id.* at 1. The United States intervened and moved that the case be dismissed based on the state secrets privilege. *Id.* Before applying the privilege to the plaintiffs' claims, the court first examined the information that had already been exposed to the public, which is essentially the same information that has been revealed in the instant case. District Court Judge Vaughn Walker found that the Government had admitted:

> . . . it monitors "contents of communications where * * * one party to the communication is outside the United States and the government has a reasonable basis to conclude that one party to the communication is a member of al Qaeda, affiliated with al Qaeda, or a member of an organization affiliated with al Qaeda, or working in support of al Qaeda." (citations omitted). *Hepting*, 2006 WL

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[4]In *Terkel v. AT & T Corp.*, 2006 WL 2088202 (N.D. Ill. July 25, 2006), the plaintiffs alleged that AT&T provided information regarding their telephone calls and internet communications to the NSA. *Id.* at 1. District Court Judge Matthew F. Kennely dismissed the case because the state secrets privilege made it impossible for the plaintiffs to establish standing. *Id.* at 20.

[5]Further, the court was not persuaded by the plaintiff's argument that the privilege was negated because the Government had admitted that the rendition program existed because it found the Government's admissions to be without details.

2038464, at 19.

Accordingly Judge Walker reasoned that "[b]ased on these public disclosures," the court could not "conclude that the existence of a certification regarding the 'communication content' program is a state secret." *Id.*

Defendants' assertion of the privilege without any request for answers to any discovery has prompted this court to first analyze this case under *Totten/Tenet*, since it appears that Defendants are arguing that this case should not be subject to judicial review. As discussed *supra*, the *Totten/Tenet* cases provide an absolute bar to any kind of judicial review. *Tenet*, 544 U.S. at 8. This rule should not be applied in the instant case, however, since the rule applies to actions where there is a secret espionage relationship between the Plaintiff and the Government. *Id.* at 7-8. It is undisputed that Plaintiffs' do not claim to be parties to a secret espionage relationship with Defendants. Accordingly, the court finds the *Totten/Tenet* rule is not applicable to the instant case. The state secrets privilege belongs exclusively to the Executive Branch and thus, it is appropriately invoked by the head of the Executive Branch agency with control over the secrets involved. *Reynolds*, 345 U.S. at 1. In the instant case, the court is satisfied that the privilege was properly invoked. Defendants' publicly-filed affidavits from Director of National Intelligence John D. Negroponte and Signal Intelligence Director, NSA Major General Richard J. Quirk, set forth facts supporting the Government's contention that the state secrets privilege and other legal doctrines required dismissal of the case. Additionally, Defendants filed classified versions of these declarations *ex parte* and *in camera* for this court's review. Defendants also filed *ex parte* and *in camera* versions of its brief along with other classified materials, further buttressing its assertion of the privilege. Plaintiffs concede that the public declaration from Director Negroponte satisfies the

procedural requirements set forth in *Reynolds*. Therefore, this court concludes that the privilege has been appropriately invoked.

Defendants argue that Plaintiffs' claims must be dismissed because Plaintiffs cannot establish standing or a *prima facie* case for any of its claims without the disclosure of state secrets. Moreover, Defendants argue that even if Plaintiffs are able to establish a *prima facie* case without revealing protected information, Defendants would be unable to defend this case without the disclosure of such information. Plaintiffs argue that Defendants' invocation of the state secrets privilege is improper with respect to their challenges to the TSP, since no additional facts are necessary or relevant to the summary adjudication of this case. Alternatively, Plaintiffs argue, that even if the court finds that the privilege was appropriately asserted, the court should use creativity and care to devise methods which would protect the privilege but allow the case to proceed.

The "next step in the judicial inquiry into the validity of the assertion of the privilege is to determine whether the information for which the privilege is claimed qualifies as a state secret." *El Masri*, 2006 WL 1391390, at 4. Again, the court acknowledges that it has reviewed all of the materials Defendants submitted *ex parte* and *in camera*. After reviewing these materials, the court is convinced that the privilege applies "because a reasonable danger exists that disclosing the information in court proceedings would harm national security interests, or would impair national defense capabilities, disclose intelligence-gathering methods or capabilities, or disrupt diplomatic relations with foreign governments." *Tenenbaum*, 372 F.3d at 777.

Plaintiffs, however, maintain that this information is not relevant to the resolution of their claims, since their claims regarding the TSP are based solely on what Defendants have publicly admitted. Indeed, although the instant case appears factually similar to *Halkin*, in that they both

involve plaintiffs challenging the legality of warrantless wiretapping, a key distinction can be drawn. Unlike *Halkin* or any of the cases in the *Reynolds* progeny, Plaintiffs here are not seeking any additional discovery to establish their claims challenging the TSP.[6]

Like Judge Walker in *Hepting,* this court recognizes that simply because a factual statement has been made public it does not necessarily follow that it is true. *Hepting,* 2006 WL 2038464 at 12. Hence, "in determining whether a factual statement is a secret, the court considers only public admissions or denials by the [G]overnment." *Id.* at 13. It is undisputed that Defendants have publicly admitted to the following: (1) the TSP exists; (2) it operates without warrants; (3) it targets communications where one party to the communication is outside the United States, and the government has a reasonable basis to conclude that one party to the communication is a member of al Qaeda, affiliated with al Qaeda, or a member of an organization affiliated with al Qaeda, or working in support of al Qaeda. As the Government has on many occasions confirmed the veracity of these allegations, the state secrets privilege does not apply to this information.

Contrary to Defendants' arguments, the court is persuaded that Plaintiffs are able to establish a *prima facie* case based solely on Defendants' public admissions regarding the TSP. Plaintiffs' declarations establish that their communications would be monitored under the TSP.[7] Further, Plaintiffs have shown that because of the existence of the TSP, they have suffered a real and concrete harm. Plaintiffs' declarations state undisputedly that they are stifled in their ability to

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[6]In *Halkin,* the plaintiffs were requesting that the Government answer interrogatories and sought to depose the secretary of defense. *Halkin,* 598 F.2d at 6.

[7]See generally, in a Declaration, attorney Nancy Hollander stated that she frequently engages in international communications with individuals who have alleged connections with terrorist organizations. (Exh. J, Hollander). Attorney William Swor also provided a similar declaration. (Exh. L, Swor Decl.). Journalist Tara McKelvey declared that she has international communications with sources who are suspected of helping the insurgents in Iraq. (Exh. K, McKelvey Decl.).

vigorously conduct research, interact with sources, talk with clients and, in the case of the attorney Plaintiffs, uphold their oath of providing effective and ethical representation of their clients.[8] In addition, Plaintiffs have the additional injury of incurring substantial travel expenses as a result of having to travel and meet with clients and others relevant to their cases. Therefore, the court finds that Plaintiffs need no additional facts to establish a *prima facie* case for any of their claims questioning the legality of the TSP.

The court, however, is convinced that Plaintiffs cannot establish a *prima facie* case to support their data-mining claims without the use of privileged information and further litigation of this issue would force the disclosure of the very thing the privilege is designed to protect. Therefore, the court grants Defendants' motion for summary judgment with respect to this claim.

Finally, Defendants assert that they cannot defend this case without the exposure of state secrets. This court disagrees. The Bush Administration has repeatedly told the general public that there is a valid basis in law for the TSP.[9] Further, Defendants have contended that the President has the authority under the AUMF and the Constitution to authorize the continued use of the TSP. Defendants have supported these arguments without revealing or relying on any classified information. Indeed, the court has reviewed the classified information and is of the opinion that this information is not necessary to any viable defense to the TSP. Defendants have presented support

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[8]Plaintiffs' Statement of Undisputed Facts (hereinafter "SUF") SUF 15 (Exh. J, Hollander Decl. ¶¶12, 16, 25; Exh. L, Swor Decl. ¶¶9, 11-12, 14-16);Plaintiffs;' Reply Memorandum in Support of Plaintiffs' Motion for Partial Summary Judgment (hereinafter "Pl.'s Reply") (Exh. P, Dratel Decl. ¶¶9-11; Exh. Q, Abdrabboh Decl. ¶¶7-8; Exh. R. Ayad. Decl. ¶¶ 4, 6-8); (Exh. M Niehoff Decl. ¶¶ 12).

[9]On December 17, 2005, in a radio address, President Bush stated:

> In the weeks following the terrorist attacks on our nation, I authorized the National Security Agency, consistent with U.S. law and the Constitution, to intercept the international communications of people with known links to al Qaeda and related terrorist organizations.
> http://www.whitehouse.gov/news/releases/2005/12/20051217.html

for the argument that "it . . is well-established that the President may exercise his statutory and constitutional authority to gather intelligence information about foreign enemies."[10] Defendants cite to various sources to support this position. Consequently, the court finds Defendants' argument that they cannot defend this case without the use of classified information to be disingenuous and without merit.

In sum, the court holds that the state secrets privilege applies to Plaintiffs' data-mining claim and that claim is dismissed. The privilege, however, does not apply to Plaintiffs' remaining claims challenging the validity of the TSP, since Plaintiffs are not relying on or requesting any classified information to support these claims and Defendants do not need any classified information to mount a defense against these claims.[11]

III. Standing

Defendants argue that Plaintiffs do not establish their standing. They contend that Plaintiffs' claim here is merely a subjective fear of surveillance which falls short of the type of injury necessary to establish standing. They argue that Plaintiffs' alleged injuries are too tenuous to be recognized, not "distinct and palpable" nor "concrete and particularized."

Article III of the U.S. Constitution limits the federal court's jurisdiction to "cases" and "controversies". *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). To have a genuine case or controversy, the plaintiff must establish standing. "[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v.*

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[10]Defendants' Brief in Support of Summary Judgment pg. 33.

[11]Defendants also contend that Plaintiffs' claims are barred because they properly invoked statutory privileges under the National Security Agency Act of 1959, 50 U.S.C. § 402 and the Intelligence Reform and Terrorism Prevention Act of 2004, 50 U.S.C. § 403-(i)(1). Again, these privileges are not availing to Defendants with respect to Plaintiffs' claims challenging the TSP, for the same reasons that the state secrets privilege does not bar these claims.

Defenders of Wildlife, 504 U.S. at 560. To establish standing under Article III, a plaintiff must satisfy the following three requirements: (1) "the plaintiff must have suffered an injury in fact - an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical"; (2) "there must be a causal connection between the injury and the conduct complained of", and (3) "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id.* at 560-561. The party invoking federal jurisdiction bears the burden of establishing these elements. *Id.* at 561.

"An association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests it seeks to protect are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 181 (2000) (citing *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 342 (1977)).

"At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we 'presume that general allegations embrace those specific facts that are necessary to support the claim.' " *Id.* at 561 (quoting *Lujan v. National Wildlife Federation*, 497 U.S. 871, 889 (1990)). "In response to a motion for summary judgment, however, the plaintiff can no longer rest upon such 'mere allegations,' but must 'set forth' by affidavit or other evidence 'specific facts' Fed.R.Civ.Proc. 56(e), which for purposes of the summary judgment motion will be taken to be true." *Id.* This court is persuaded that Plaintiffs in this case have set forth the necessary facts to have satisfied all three of the prerequisites listed above to establish standing.

To determine whether Plaintiffs have standing to challenge the constitutionality of the TSP, we must examine the nature of the injury-in-fact which they have alleged. "The injury must be ... 'distinct and palpable,' and not 'abstract' or 'conjectural' or 'hypothetical.'" *National Rifle Association of America v. Magaw*, 132 F.3d 272, 280 (6th Cir. 1997) (citing *Allen v. Wright*, 468 U.S 737, 751 (1982)).

Plaintiffs here contend that the TSP has interfered with their ability to carry out their professional responsibilities in a variety of ways, including that the TSP has had a significant impact on their ability to talk with sources, locate witnesses, conduct scholarship, engage in advocacy and communicate with persons who are outside of the United States, including in the Middle East and Asia. Plaintiffs have submitted several declarations to that effect. For example, scholars and journalists such as plaintiffs Tara McKelvey, Larry Diamond, and Barnett Rubin indicate that they must conduct extensive research in the Middle East, Africa, and Asia, and must communicate with individuals abroad whom the United States government believes to be terrorist suspects or to be associated with terrorist organizations.[12] In addition, attorneys Nancy Hollander, William Swor, Joshua Dratel, Mohammed Abdrabboh, and Nabih Ayad indicate that they must also communicate with individuals abroad whom the United States government believes to be terrorist suspects or to be associated with terrorist organizations,[13] and must discuss confidential information over the phone and email with their international clients.[14] All of the Plaintiffs contend that the TSP has caused clients, witnesses and sources to discontinue their communications with plaintiffs out of fear that

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[12]SUF 15B (Exh. I, Diamond Decl. ¶9; Exh. K, McKelvey Decl. ¶8-10).

[13]SUF 15B (Exh. J, Hollander Decl. ¶¶12-14, 17-24; Exh. L, Swor Decl. ¶¶5-7, 10);Pl.'s Reply (Exh. M, Dratel Decl. ¶¶5-6; Exh. Q, Abdrabboh Decl. ¶¶3-4; Exh. R, Ayad Decl. ¶¶ 5, 7-9).

[14]SUF 15 (Exh. J, Hollander Decl. ¶¶12, 16, 25; Exh. L, Swor Decl. ¶¶9, 11-12, 14-16); Pl.'s Reply (Exh. P, Dratel Decl. ¶¶5-6; Exh. Q, Abdrabboh Decl. ¶¶3-4; Exh. R, Ayad Decl. ¶¶ 6-7).

their communications will be intercepted.[15] They also allege injury based on the increased financial burden they incur in having to travel substantial distances to meet personally with their clients and others relevant to their cases.[16]

The ability to communicate confidentially is an indispensable part of the attorney-client relationship. As University of Michigan legal ethics professor Leonard Niehoff explains, attorney-client confidentiality is "central to the functioning of the attorney-client relationship and to effective representation."[17] He further explains that Defendants' TSP "creates an overwhelming, if not insurmountable, obstacle to effective and ethical representation" and that although Plaintiffs are resorting to other "inefficient" means for gathering information, the TSP continues to cause "substantial and ongoing harm to the attorney-client relationships and legal representations."[18] He explains that the increased risk that privileged communications will be intercepted forces attorneys to cease telephonic and electronic communications with clients to fulfill their ethical responsibilities.[19]

Defendants argue that the allegations present no more than a "chilling effect" based upon purely speculative fears that the TSP subjects the Plaintiffs to surveillance. In arguing that the injuries are not constitutionally cognizable. Defendants rely heavily on the case of *Laird v. Tatum*, 408 U.S. 1 (1972).

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[15]SUF 15 (Exh. J, Hollander Decl. ¶¶12, 16, 25; Exh. L, Swor Decl. ¶¶9, 11-12, 14-16);Pl.'s Reply (Exh. P, Dratel Decl. ¶¶9-11; Exh. Q, Abdrabboh Decl. ¶¶7-8; Exh. R. Ayad. Decl. ¶¶ 4, 6-8).

[16]SUF 15 (Exh. J, Hollander Decl. ¶¶20, 23-25; Exh. L, Swor Decl. ¶¶13-14); Pl.'s Reply (Exh. P, Dratel Decl. ¶¶9-11; Exh. Q, Abdrabboh Decl. ¶¶7-8; Exh. R, Ayad Decl. ¶¶ 6-8).

[17]Pl.'s Reply (Exh. M Niehoff Decl. ¶¶ 12)

[18]Pl.'s Reply (Exh. M Niehoff Decl. ¶¶ 19-20)

[19]Pl.'s Reply (Exh. M Niehoff Decl. ¶¶ 15-20)

In *Laird*, the plaintiffs sought declaratory and injunctive relief on their claim that their rights were being invaded by the Army's domestic surveillance of civil disturbances and "public activities that were thought to have at least some potential for civil disorder." *Id.* at 6. The plaintiffs argued that the surveillance created a chilling effect on their First Amendment rights caused by the existence and operation of the surveillance program in general. *Id.* at 3. The Supreme Court rejected the plaintiffs' efforts to rest standing upon the mere "chill" that the program cast upon their associational activities. It said that the "jurisdiction of a federal court may [not] be invoked by a complainant who alleges that the exercise of his First Amendment rights is being chilled by the mere existence, *without more*, of a governmental investigative and data-gathering activity." *Id.* (emphasis added)

Laird, however, must be distinguished here. The plaintiffs in *Laird* alleged only that they *could conceivably* become subject to the Army's domestic surveillance program. *Presbyterian Church v. United States*, 870 F.2d 518, 522 (1989) (citing *Laird v. Tatum*, 408 U.S at 13) (emphasis added). The Plaintiffs here are not merely alleging that they "could conceivably" become subject to surveillance under the TSP, but that continuation of the TSP has damaged them. The President indeed has publicly acknowledged that the types of calls Plaintiffs are making are the types of conversations that would be subject to the TSP.[20]

Although *Laird* establishes that a party's allegation that it has suffered a subjective "chill" alone does not confer Article III standing, *Laird* does not control this case. As Justice (then Judge)

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[20]In December 2005, the President publicly acknowledged that the TSP intercepts the contents of certain communications as to which there are reasonable grounds to believe that (1) the communication originated or terminated outside the United States, and (2) a party to such communication is a member of al Qaeda, a member of a group affiliated with al Qaeda, or an agent of al Qaeda or its affiliates. Available at http://www.white-house.gov//news/releases/2005/12/20051219-2.html.

Breyer has observed, "[t]he problem for the government with Laird . . . lies in the key words 'without more.'" *Ozonoff v. Berzak*, 744 F.2d 224, 229 (1st Cir. 1984). This court agrees with Plaintiffs' position that "standing here does not rest on the TSP's 'mere existence, without more.'" The Plaintiffs in this case are not claiming simply that the Defendants' surveillance has "chilled" them from making international calls to sources and clients. Rather, they claim that Defendants' surveillance has chilled their sources, clients, and potential witnesses from communicating with them. The alleged effect on Plaintiffs is a concrete, actual inability to communicate with witnesses, sources, clients and others without great expense which has significantly crippled Plaintiffs, at a minimum, in their ability to report the news and competently and effectively represent their clients. See *Presbyterian Church v. United States*, 870 F.2d 518 (1989) (church suffered substantial decrease in attendance and participation of individual congregants as a result of governmental surveillance). Plaintiffs have suffered actual concrete injuries to their abilities to carry out their professional responsibilities. The direct injury and objective chill incurred by Plaintiffs are more than sufficient to place this case outside the limitations imposed by *Laird*.

The instant case is more akin to *Friends of the Earth*, in which the Court granted standing to environmental groups who sued a polluter under the Clean Water Act because environmental damage caused by the defendant had deterred members of the plaintiff organizations from using and enjoying certain lands and rivers. *Friends of the Earth*, 528 U.S. at 181-183. The Court there held that the affidavits and testimony presented by plaintiffs were sufficient to establish reasonable concerns about the effects of those discharges and were more than "general averments" and "conclusory allegations." *Friends of the Earth*, 528 U.S. at 183-184. The court distinguished the case from *Lujan*, in which the Court had held that no actual injury had been established where

plaintiffs merely indicated "'some day' intentions to visit endangered species around the world." *Friends of the Earth*, 528 U.S. at 184 (quoting *Lujan*, 504 U.S. at 564). The court found that the affiants' conditional statements that they would use the nearby river for recreation if defendant were not discharging pollutants into it was sufficient to establish a concrete injury. *Id.* at 184.

Here, Plaintiffs are not asserting speculative allegations. Instead, the declarations asserted by Plaintiffs establish that they are suffering a present concrete injury in addition to a chill of their First Amendment rights. Plaintiffs would be able to continue using the telephone and email in the execution of their professional responsibilities if the Defendants were not undisputedly and admittedly conducting warrantless wiretaps of conversations. As in *Friends of the Earth,* this damage to their interest is sufficient to establish a concrete injury.

Numerous cases have granted standing where the plaintiffs have suffered concrete profession-related injuries comparable to those suffered by Plaintiffs here. For example, the First Circuit conferred standing upon claimants who challenged an executive order which required applicants for employment with the World Health Organization to undergo a "loyalty" check that included an investigation into the applicant's associations and activities. The court there determined that such an investigation would have a chilling effect on what an applicant says or does, a sufficient injury to confer standing. *Ozonoff*, 744 F.2d at 228-229. Similarly, the District of Columbia Circuit Court of Appeals granted standing to a reshelver of books at the Library of Congress who was subjected to a full field FBI investigation which included an inquiry into his political beliefs and associations and subsequently resulted in his being denied a promotion or any additional employment opportunities; the court having determined that plaintiff had suffered a present objective harm, as well as an objective chill of his First Amendment rights and not merely a

potential subjective chill as in *Laird*. Also, the Supreme Court in *Presbyterian Church v. United States*, granted standing to a church which suffered decreased attendance and participation when the government actually entered the church to conduct surveillance. *Presbyterian Church*, 870 F.2d at 522. Lastly, in *Jabara v. Kelley*, 476 F.Supp. 561 (E.D. Mich. 1979), *vac'd on other grounds sub. nom. Jabara v. Webster*, 691 F.2d 272 (6th Cir. 1982), the court held that an attorney had standing to sue to enjoin unlawful FBI and NSA surveillance which had deterred others from associating with him and caused "injury to his reputation and legal business." *Id.* at 568.

These cases constitute acknowledgment that substantial burdens upon a plaintiff's professional activities are an injury sufficient to support standing. Defendants ignore the significant, concrete injuries which Plaintiffs continue to experience from Defendants' illegal monitoring of their telephone conversations and email communications. Plaintiffs undeniably have cited to distinct, palpable, and substantial injuries that have resulted from the TSP.

This court finds that the injuries alleged by Plaintiffs are "concrete and particularized", and not "abstract or conjectural." The TSP is not hypothetical, it is an actual surveillance program that was admittedly instituted after September 11, 2001, and has been reauthorized by the President more than thirty times since the attacks.[21] The President has, moreover, emphasized that he intends to continue to reauthorize the TSP indefinitely.[22] Further, the court need not speculate upon the kind of activity the Plaintiffs want to engage in - they want to engage in conversations with individuals abroad without fear that their First Amendment rights are being infringed upon. Therefore, this court concludes that Plaintiffs have satisfied the requirement of alleging "actual or threatened

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[21] Available at http://www.white-house.gov//news/releases/2005/12/20051219-2.html

[22] *Id.*

injury" as a result of Defendants' conduct.

It must now be determined whether Plaintiffs have shown that there is a causal connection between the injury and the complained of conduct. *Lujan*, 504 U.S. at 560-561. The causal connection between the injury and the conduct complained of is fairly traceable to the challenged action of Defendants. The TSP admittedly targets communications originated or terminated outside the United States where a party to such communication is in the estimation of Defendants, a member of al Qaeda, a member of a group affiliated with al Qaeda, or an agent of al Qaeda or its affiliates.[23] The injury to the Plaintiffs stems directly from the TSP and their injuries can unequivocally be traced to the TSP.

Finally, it is likely that the injury will be redressed by the requested relief. A determination by this court that the TSP is unconstitutional and a further determination which enjoins Defendants from continued warrantless wiretapping in contravention of FISA would assure Plaintiffs and others that they could freely engage in conversations and correspond via email without concern, at least without notice, that such communications were being monitored. The requested relief would thus redress the injury to Plaintiffs caused by the TSP.

Although this court is persuaded that Plaintiffs have alleged sufficient injury to establish standing, it is important to note that if the court were to deny standing based on the unsubstantiated minor distinctions drawn by Defendants, the President's actions in warrantless wiretapping, in contravention of FISA, Title III, and the First and Fourth Amendments, would be immunized from judicial scrutiny. It was never the intent of the Framers to give the President such unfettered control, particularly where his actions blatantly disregard the parameters clearly enumerated in the Bill of

[23] Available at http://www.white-house.gov//news/releases/2005/12/20051219-2.html

Rights. The three separate branches of government were developed as a check and balance for one another. It is within the court's duty to ensure that power is never "condense[d] ... into a single branch of government." *Hamdi v. Rumsfeld*, 542 U.S. 507, 536 (2004) (plurality opinion). We must always be mindful that "[w]hen the President takes official action, the Court has the authority to determine whether he has acted within the law." *Clinton v. Jones*, 520 U.S. 681, 703 (1997). "It remains one of the most vital functions of this Court to police with care the separation of the governing powers . . . . When structure fails, liberty is always in peril." *Public Citizen v. U.S. Dept. of Justice*, 491 U.S. 440, 468 (1989) (Kennedy, J., concurring).

Because of the very secrecy of the activity here challenged, Plaintiffs each must be and are given standing to challenge it, because each of them, is injured and chilled substantially in the exercise of First Amendment rights so long as it continues. Indeed, as the perceived need for secrecy has apparently required that no person be notified that he is aggrieved by the activity, and there have been no prosecutions, no requests for extensions or retroactive approvals of warrants, no victim in America would be given standing to challenge this or any other unconstitutional activity, according to the Government. The activity has been acknowledged, nevertheless.

Plaintiffs have sufficiently alleged that they suffered an actual, concrete injury traceable to Defendants and redressable by this court. Accordingly, this court denies Defendants' motion to dismiss for lack of standing.

IV. The History of Electronic Surveillance in America

Since the Court's 1967 decision of *Katz v. U.S.*, 389 U.S. 347 (1967), it has been understood that the search and seizure of private telephone conversations without physical trespass required

prior judicial sanction, pursuant to the Fourth Amendment. Justice Stewart there wrote for the Court that searches conducted without prior approval by a judge or magistrate were per se unreasonable, under the Fourth Amendment. *Id.* at 357.

Congress then, in 1968, enacted Title III of the Omnibus Crime Control and Safe Streets Act (hereinafter "Title III")[24] governing all wire and electronic interceptions in the fight against certain listed major crimes. The Statute defined an " aggrieved person",[25] and gave such person standing to challenge any interception allegedly made without a judicial order supported by probable cause, after requiring notice to such person of any interception made.[26]

The statute also stated content requirements for warrants and applications under oath therefor made,[27] including time, name of the target, place to be searched and proposed duration of that search, and provided that upon showing of an emergency situation, a post-interception warrant could be obtained within forty-eight hours.[28]

In 1972 the court decided *U.S. v. U.S. District Court*, 407 U.S. 297 (1972) (the *Keith* case) and held that, for lawful electronic surveillance even in domestic security matters, the Fourth Amendment requires a prior warrant.

In 1976 the Congressional "Church Committee"[29] disclosed that every President since 1946

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[24]Pub. L. 90-351, 82 Stat. 211, codified as amended at 18 U.S.C. §§ 2510 *et seq.*

[25]18 U.S.C. § 2510(11) ("aggrieved person" means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed.)

[26]18 U.S.C. § 2518

[27]18 U.S.C. § 2518(1)

[28]18 U.S.C. § 2518(7)

[29]The "Church Committee" was the United States Committee to Study Governmental Operations with Respect to Intelligence Activities.

had engaged in warrantless wiretaps in the name of national security, and that there had been numerous political abuses[30], and in 1978 Congress enacted the FISA.[31]

Title III specifically excluded from its coverage all interceptions of international or foreign communications; and was later amended to state that "the FISA of 1978 shall be the exclusive means by which electronic surveillance of foreign intelligence communications may be conducted."[32]

The government argues that Title III's disclaimer language, at 18 U.S.C. § 2511(2)(f), that nothing therein should be construed to limit the constitutional power of the President (to make international wiretaps). In the *Keith* case, Justice Powell wrote that "Congress simply left Presidential powers where it found them", that the disclaimer was totally neutral, and not a grant of authority. *U.S. v. U.S. District Court*, 407 U.S. at 303.

The FISA defines a "United States person"[33] to include each of Plaintiffs herein and requires a prior warrant for any domestic international interception of their communications. For various exigencies, exceptions are made. That is, the government is granted fifteen days from Congressional Declaration of War within which it may conduct intercepts before application for an order.[34] It is also granted one year, on certification by the Attorney General,[35] and seventy-two hours for other

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[30] S. REP. NO. 94-755, at 332 (1976)

[31] Pub. L. 95-511, Title I, 92 Stat 1976 (Oct. 25, 1978), codified as amended at 50 U.S.C. §§ 1801 *et seq.*

[32] 18 U.S.C. §2511(2)(f)

[33] 50 U.S.C. § 1801(h)(4)(i)("United States person) means a citizen of the United States, an alien lawfully admitted for permanent residence, an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States which is not a foreign power.

[34] 50 U.S.C. § 1811

[35] 50 U.S.C. § 1802

defined exigencies.[36]

Those delay provisions clearly reflect the Congressional effort to balance executive needs against the privacy rights of United States persons, as recommended by Justice Powell in the *Keith* case when he stated that:

> Different standards may be compatible with the Fourth Amendment if they are reasonable both in relation to the legitimate need of Government for intelligence information and the protected rights of our citizens.. *U.S. v. U.S. District Court*, 407 U.S. at 322-323.

Also reflective of the balancing process Congress pursued in FISA is the requirement that interceptions may be for no longer than a ninety day duration, minimization is again required[37], and an aggrieved person is again (as in Title III) required to be notified of proposed use and given the opportunity to file a motion to suppress.[38] Also again, alternatives to a wiretap must be found to have been exhausted or to have been ineffective.[39]

A FISA judicial warrant, moreover, requires a finding of probable cause to believe that the target was either a foreign power or agent thereof,[40] not that a crime had been or would be committed, as Title III's more stringent standard required. Finally, a special FISA court was required to be appointed, of federal judges designated by the Chief Justice.[41] They were required to hear, *ex parte*, all applications and make all orders.[42]

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[36] 50 U.S.C. § 1805(f)

[37] 50 U.S.C. § 1805(e)(1)

[38] 50 U.S.C. § 1806(c)

[39] 50 U.S.C. § 1804(a)(7)(E)(ii), § 1805(a)(5)

[40] 50 U.S.C. § 1805(b)

[41] 50 U.S.C § 1803

[42] 50 U.S.C § 1805

The FISA was essentially enacted to create a secure framework by which the Executive branch may conduct legitimate electronic surveillance for foreign intelligence while meeting our national commitment to the Fourth Amendment. It is fully described in *United States v. Falvey*, 540 F. Supp. 1306 (E.D.N.Y. 1982), where the court held that FISA did not intrude upon the President's undisputed right to conduct foreign affairs, but protected citizens and resident aliens within this country, as "United States persons." *Id.* at 1312.

The Act was subsequently found to meet Fourth Amendment requirements constituting a reasonable balance between Governmental needs and the protected rights of our citizens, in *United States v. Cavanagh*, 807 F.2d 787 (9th Cir. 1987), and *United States v. Duggan*,743, F.2d 59 (2d Cir. 1984).

Against this background the present program of warrantless wiretapping has been authorized by the administration and the present lawsuit filed.

V. The Fourth Amendment

The Constitutional Amendment which must first be discussed provides:

> The right the of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. Amend. IV.

This Amendment ". . . was specifically propounded and ratified with the memory of . . . *Entick v. Carrington*, 95 Eng. Rep. 807 (1765) in mind", stated Circuit Judge Skelly Wright in *Zweibon v. Mitchell*, 516 F.2d 594, 618 n.67 (D.C. Circ. 1975) (en banc) (plurality opinion). Justice Douglas, in his concurrence in the *Keith* case, also noted the significance of *Entick* in our history,

stating:

> For it was such excesses as the use of general warrants and the writs of assistance that led to the ratification of the Fourth Amendment. In *Entick v. Carrington* (citation omitted), decided in 1765, one finds a striking parallel to the executive warrants utilized here. The Secretary of State had issued general executive warrants to his messengers authorizing them to roam about and to seize libelous material and libellants of the sovereign. Entick, a critic of the Crown, was the victim of one such general search during which his seditious publications were impounded. He brought a successful damage action for trespass against the messengers. The verdict was sustained on appeal. Lord Camden wrote that if such sweeping tactics were validated, then the secret cabinets and bureaus of every subject in this kingdom will be thrown open to the search and inspection of a messenger, whenever the secretary of state shall think fit to charge, or even to suspect, a person to be the author, printer, or publisher of a seditious libel.' (citation omitted) In a related and similar proceeding, *Huckle v. Money* (citation omitted), the same judge who presided over Entick's appeal held for another victim of the same despotic practice, saying '(t)o enter a man's house by virtue of a nameless warrant, in order to procure evidence, is worse than the Spanish Inquisition . . .' See also *Wilkes v. Wood* (citation omitted), . . . [t]he tyrannical invasions described and assailed in *Entick*, *Huckle*, and *Wilkes*, practices which also were endured by the colonists, have been recognized as the primary abuses which ensured the Warrant Clause a prominent place in our Bill of Rights. *U.S. v. U.S. District Court*, 407 U.S. at 328-329 (Douglas, J., concurring).

Justice Powell, in writing for the court in the *Keith* case also wrote that:

> Over two centuries ago, Lord Mansfield held that common-law principles prohibited warrants that ordered the arrest of unnamed individuals who the officer might conclude were guilty of seditious libel. 'It is not fit,' said Mansfield, 'that the receiving or judging of the information should be left to the discretion of the officer. The magistrate ought to judge; and should give certain directions to the officer.' (citation omitted).
>
> Lord Mansfield's formulation touches the very heart of the Fourth Amendment directive: that, where practical, a governmental search and seizure should represent both the efforts of the officer to gather evidence of wrongful acts and the judgment of the magistrate that the collected evidence is sufficient to justify invasion of a citizen's

> private premises or conversation. Inherent in the concept of a warrant is its issuance by a 'neutral and detached magistrate.' (citations omitted) The further requirement of 'probable cause' instructs the magistrate that baseless searches shall not proceed. *U.S. v. U.S. District Court*, 407 U.S. at 316.

The Fourth Amendment, accordingly, was adopted to assure that Executive abuses of the power to search would not continue in our new nation.

Justice White wrote in 1984 in *United States v. Karo*, 468 U.S. 705 (1984), a case involving installation and monitoring of a beeper which had found its way into a home, that a private residence is a place in which society recognizes an expectation of privacy; that warrantless searches of such places are presumptively unreasonable, absent exigencies. *Id.* at 714-715. *Karo* is consistent with *Katz* where Justice Stewart held that:

> 'Over and again this Court has emphasized that the mandate of the (Fourth) Amendment requires adherence to judicial processes,' (citation omitted) and that searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment - subject only to a few specifically established and well-delineated exceptions. *Katz,* 389 U.S. at 357.

Justice Powell's opinion in the *Keith* case also stated that:

> The Fourth Amendment does not contemplate the executive officers of Government as neutral and disinterested magistrates. Their duty and responsibility are to enforce the laws, to investigate, and to prosecute. (citation omitted) But those charged with this investigative and prosecutorial duty should not be the sole judges of when to utilize constitutionally sensitive means in pursuing their tasks. The historical judgment, which the Fourth Amendment accepts, is that unreviewed executive discretion may yield too readily to pressures to obtain incriminating evidence and overlook potential invasions of privacy and protected speech. *U.S. v. U.S. District Court*, 407 U.S. at 317.

Accordingly, the Fourth Amendment, about which much has been written, in its few words requires

reasonableness in all searches. It also requires prior warrants for any reasonable search, based upon prior-existing probable cause, as well as particularity as to persons, places, and things, and the interposition of a neutral magistrate between Executive branch enforcement officers and citizens.

In enacting FISA, Congress made numerous concessions to stated executive needs. They include delaying the applications for warrants until after surveillance has begun for several types of exigencies, reducing the probable cause requirement to a less stringent standard, provision of a single court of judicial experts, and extension of the duration of approved wiretaps from thirty days (under Title III) to a ninety day term.

All of the above Congressional concessions to Executive need and to the exigencies of our present situation as a people, however, have been futile. The wiretapping program here in litigation has undisputedly been continued for at least five years, it has undisputedly been implemented without regard to FISA and of course the more stringent standards of Title III, and obviously in violation of the Fourth Amendment.

The President of the United States is himself created by that same Constitution.

VI. The First Amendment

The First Amendment provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONST. Amend. I.

This Amendment, the very first which the American people required to be made to the new Constitution, was adopted, as was the Fourth, with *Entick v. Carrington*, and the actions of the star chamber in mind. As the Court wrote in *Marcus v. Search Warrants*, 367 U.S. 717 (1961):

> Historically the struggle for freedom of speech and press in England was bound up with the issue of the scope of the search and seizure. . . .
>
> * * * *
>
> This history was, of course, part of the intellectual matrix within which our own constitutional fabric was shaped. The Bill of Rights was fashioned against the background of knowledge that unrestricted power of search and seizure could also be an instrument for stifling liberty of expression. *Marcus*, 367 U.S. at 724, 729

As Justice Brennan wrote for the Court in *Dombrowski v. Pfister*, 380 U.S. 479 (1965), the appellant organizations had been subjected to repeated announcements of their subversiveness which frightened off potential members and contributors, and had been harmed irreparably, requiring injunctive relief. The Louisiana law against which they complained, moreover, had a chilling effect on protected expression because, so long as the statute was available, the threat of prosecution for protected expression remained real and substantial.

Judge Wright, in *Zweibon*, noted that the tapping of an organization's office phone will provide the membership roster of that organization, as forbidden by *Bates v. City of Little Rock*, 361 U.S. 516 (1960); thereby causing members to leave that organization, and thereby chilling the organization's First Amendment rights and causing the loss of membership. *Zweibon*, 516 F.2d at 634.

A governmental action to regulate speech may be justified only upon showing of a compelling governmental interest; and that the means chosen to further that interest are the least restrictive of freedom of belief and association that could be chosen. *Clark v. Library of Congress*, 750 F.2d 89, 94 (D.C. Cir. 1984).

It must be noted that FISA explicitly admonishes that ". . . no United States person may be

considered . . . an agent of a foreign power solely upon the basis of activities protected by the First Amendment to the Constitution of the United States." 50 U.S.C. §1805(a)(3)(A). See also *United States v. Falvey*, 540 F. Supp. at 1310.

Finally, as Justice Powell wrote for the Court in the *Keith* case:

> National security cases, moreover, often reflect a convergence of First and Fourth Amendment values not present in cases of 'ordinary' crime. Though the investigative duty of the executive may be stronger in such cases, so also is there greater jeopardy to constitutionally protected speech. 'Historically the struggle for freedom of speech and press in England was bound up with the issue of the scope of the search and seizure power,' (citation omitted). History abundantly documents the tendency of Government –however benevolent and benign its motives – to view with suspicion those who most fervently dispute its policies. Fourth Amendment protections become the more necessary when the targets of official surveillance may be those suspected of unorthodoxy in their political beliefs. *U.S. v. U.S. District Court*, 407 U.S. at 313-314.

The President of the United States, a creature of the same Constitution which gave us these Amendments, has undisputedly violated the Fourth in failing to procure judicial orders as required by FISA, and accordingly has violated the First Amendment Rights of these Plaintiffs as well.

VII. The Separation of Powers

The Constitution of the United States provides that "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States. . . ."[43] It further provides that "[t]he executive Power shall be vested in a President of the United States of America."[44] And that ". . . he shall take care that the laws be faithfully executed . . . ."[45]

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[43]U.S. CONST. art. I, § 1

[44]U.S. CONST. art. II, § 1

[45]U.S. CONST. art. II, § 3

Our constitution was drafted by founders and ratified by a people who still held in vivid memory the image of King George III and his General Warrants. The concept that each form of governmental power should be separated was a well-developed one. James Madison wrote that:

> The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. THE FEDERALIST NO. 47, at 301 (James Madison).

The seminal American case in this area, and one on which the government appears to rely, is that of *Youngstown Sheet & Tube v. Sawyer*, 343 U.S. 579 (1952) in which Justice Black, for the court, held that the Presidential order in question, to seize steel mills, was not within the constitutional powers of the chief executive. Justice Black wrote that:

> The founders of this Nation entrusted the law-making power to the Congress alone in both good and bad times. It would do no good to recall the historical events. the fears of power and the hopes for freedom that lay behind their choice. Such a review would but confirm our holding that this seizure order cannot stand. *Youngstown*, 343 U.S. at 589.

Justice Jackson's concurring opinion in that case has become historic. He wrote that, although the Constitution had diffused powers the better to secure liberty, the powers of the President are not fixed, but fluctuate, depending upon their junctures with the actions of Congress. Thus, if the President acted pursuant to an express or implied authorization by Congress, his power was at it maximum, or zenith. If he acted in absence of Congressional action, he was in a zone of twilight reliant upon only his own independent powers. *Youngstown*, 343 U.S. at 636-638. But "when the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for he can rely only upon his own Constitutional powers minus any Constitutional powers of Congress over the matter." *Youngstown*, 343 U.S. at 637 (Jackson, J.,

concurring).

In that case, he wrote that it had been conceded that no congressional authorization existed for the Presidential seizure. Indeed, Congress had several times covered the area with statutory enactments inconsistent with the seizure. He further wrote of the President's powers that:

> The example of such unlimited executive power that must have most impressed the forefathers was the prerogative exercised by George III, and the description of its evils in the Declaration of Independence leads me to doubt that they were creating their new Executive in his image. Continental European examples were no more appealing. And if we seek instruction from our own times, we can match it only from the executive powers in those governments we disparagingly describe as totalitarian. I cannot accept the view that this clause is a grant in bulk of all conceivable executive power but regard it as an allocation to the presidential office of the generic powers thereafter stated. *Id.* at 641.

After analyzing the more recent experiences of Weimar, Germany, the French Republic, and Great Britain, he wrote that:

> This contemporary foreign experience may be inconclusive as to the wisdom of lodging emergency powers somewhere in a modern government. But it suggests that emergency powers are consistent with free government only when their control is lodged elsewhere than in the Executive who exercises them. That is the safeguard that would be nullified by our adoption of the 'inherent powers' formula. Nothing in my experience convinces me that such risks are warranted by any real necessity, although such powers would, of course, be an executive convenience. *Id.* at 652.

Justice Jackson concluded that:

> With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations. *Youngstown*, 343 U.S. at 655 (Jackson, J., concurring).

Accordingly, Jackson concurred, the President had acted unlawfully.

In this case, the President has acted, undisputedly, as FISA forbids. FISA is the expressed statutory policy of our Congress. The presidential power, therefore, was exercised at its lowest ebb and cannot be sustained.

In *United States v. Moussaoui*, 365 F.3d 292 (4th Cir. 2004) a prosecution in which production of enemy combatant witnesses had been refused by the government and the doctrine of Separation of Powers raised, the court, citing *Mistretta v. United States*, 488 U.S. 361 (1989), noted that it:

> "[C]onsistently has given voice to, and has reaffirmed, the central judgment of the Framers of the Constitution that, within our political scheme, the separation of governmental powers into three coordinate Branches is essential to the preservation of liberty." *United States v. Moussaoui*, 365 F.3d at 305 citing *Mistretta v. United States*, 488 U.S. 361, 380 (1989)

Finally, in the case of *Clinton v. Jones*, 520 U.S. 681 (1997), the separation of powers doctrine is again discussed and, again, some overlap of the authorities of two branches is permitted. In that case, although Article III jurisdiction of the federal courts is found intrusive and burdensome to the Chief Executive it did not follow, the court held, that separation of powers principles would be violated by allowing a lawsuit against the Chief Executive to proceed. *Id.* at 701. Mere burdensomeness or inconvenience did not rise to the level of superceding the doctrine of separation of powers. *Id.* at 703.

In this case, if the teachings of *Youngstown* are law, the separation of powers doctrine has been violated. The President, undisputedly, has violated the provisions of FISA for a five-year period. Justice Black wrote, in *Youngstown*:

> Nor can the seizure order be sustained because of the several constitutional provisions that grant executive power to the President.

> In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who make laws which the President is to execute. The first section of the first article says that 'All legislative powers herein granted shall be vested in a Congress of the United States * * *'
>
> The President's order does not direct that a congressional policy be executed in a manner prescribed by Congress – it directs that a presidential policy be executed in a manner prescribed by the President. . . . The Constitution did not subject this law-making power of Congress to presidential or military supervision or control. *Youngstown*, 343 U.S. at 587-588.

These secret authorization orders must, like the executive order in that case, fall. They violate the Separation of Powers ordained by the very Constitution of which this President is a creature.

VIII. The Authorization for Use of Military Force

After the terrorist attack on this Country of September 11, 2001, the Congress jointly enacted the Authorization for Use of Military Force (hereinafter "AUMF") which states:

> That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.[46]

The Government argues here that it was given authority by that resolution to conduct the TSP in violation of both FISA and the Constitution.

First, this court must note that the AUMF says nothing whatsoever of intelligence or

[46] Authorization for Use of Military Force, Pub. L. No. 107-40, § 2(a), 115 Stat. 224 (Sept. 18, 2001) (reported as a note to 50 U.S.C.A. § 1541)

surveillance. The government argues that such authority must be implied. Next it must be noted that FISA and Title III, are together by their terms denominated by Congress as the exclusive means by which electronic surveillance may be conducted. Both statutes have made abundantly clear that prior warrants must be obtained from the FISA court for such surveillance, with limited exceptions, none of which are here even raised as applicable. Indeed, the government here claims that the AUMF has by implication granted its TSP authority for more than five years, although FISA's longest exception, for the Declaration of War by Congress, is only fifteen days from date of such a Declaration.[47]

FISA's history and content, detailed above, are highly specific in their requirements, and the AUMF, if construed to apply at all to intelligence is utterly general. In *Morales v. TWA, Inc.*, 504 U.S. 374 (1992), the Supreme Court taught us that "it is a commonplace of statutory construction that the specific governs the general." *Id.* at 384. The implication argued by Defendants, therefore, cannot be made by this court.

The case of *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) in which the Supreme Court held that a United States citizen may be held as an enemy combatant, but is required by the U.S. Constitution to be given due process of law, must also be examined. Justice O'Connor wrote for the court that:

> [D]etention of individuals . . . for the duration of the particular conflict in which they are captured is so fundamental and accepted an incident to war as to be an exercise of the "necessary and appropriate force" Congress has authorized the President to use. *Hamdi*, 542 U.S. at 518.

She wrote that the entire object of capture is to prevent the captured combatant from returning to his same enemy force, and that a prisoner would most certainly return to those forces

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[47] 50 U.S.C. § 1811

if set free. Congress had, therefore, clearly authorized detention by the Force Resolution. *Id.* at 518-519.

However, she continued, indefinite detention for purposes of interrogation was certainly not authorized and it raised the question of what process is constitutionally due to a citizen who disputes the enemy combatant status assigned him. *Hamdi*, 542 U.S. at 521, 524.

Justice O'Connor concluded that such a citizen must be given Fifth Amendment rights to contest his classification, including notice and the opportunity to be heard by a neutral decisionmaker. *Hamdi*, 542 U.S. at 533 (citing *Cleveland Board of Education v. Laudermill*, 470 U.S. 532 (1985)). Accordingly, her holding was that the Bill of Rights of the United States Constitution must be applied despite authority granted by the AUMF.

She stated that:

> It is during our most challenging and uncertain moments that our Nation's commitment to due process is most severely tested; and it is in those times that we must preserve our commitment at home to the principles for which we fight abroad.
>
> * * * *
>
> Any process in which the Executive's factual assertions go wholly unchallenged or are simply presumed correct without any opportunity for the alleged combatant to demonstrate otherwise falls constitutionally short. *Hamdi*, 542 U.S. at 532, 537.

Under *Hamdi*, accordingly, the Constitution of the United States must be followed.

The AUMF resolution, if indeed it is construed as replacing FISA, gives no support to Defendants here. Even if that Resolution superceded all other statutory law, Defendants have violated the Constitutional rights of their citizens including the First Amendment, Fourth Amendment, and the Separation of Powers doctrine.

IX. Inherent Power

Article II of the United States Constitution provides that any citizen of appropriate birth, age and residency may be elected to the Office of President of the United States and be vested with the executive power of this nation.[48]

The duties and powers of the Chief Executive are carefully listed, including the duty to be Commander in Chief of the Army and Navy of the United States,[49] and the Presidential Oath of Office is set forth in the Constitution and requires him to swear or affirm that he "will, to the best of my ability, preserve, protect and defend the Constitution of the United States."[50]

The Government appears to argue here that, pursuant to the penumbra of Constitutional language in Article II, and particularly because the President is designated Commander in Chief of the Army and Navy, he has been granted the inherent power to violate not only the laws of the Congress but the First and Fourth Amendments of the Constitution, itself.

We must first note that the Office of the Chief Executive has itself been created, with its powers, by the Constitution. There are no hereditary Kings in America and no powers not created by the Constitution. So all "inherent powers" must derive from that Constitution.

We have seen in *Hamdi* that the Fifth Amendment of the United States Constitution is fully applicable to the Executive branch's actions and therefore it can only follow that the First and Fourth Amendments must be applicable as well.[5] In the *Youngstown* case the same "inherent powers" argument was raised and the Court noted that the President had been created Commander in Chief

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[48]U.S. CONST. art. II, § 5

[49]U.S. CONST. art. II, § 2[1]

[50]U.S. CONST. art. II, § 1[8]

[51]See generally *Hamdi*, 542 U.S. 507 (2004)

of only the military, and not of all the people, even in time of war.[52] Indeed, since *Ex Parte Milligan*, we have been taught that the "Constitution of the United States is a law for rulers and people, equally in war and in peace. . . ." *Ex Parte Milligan*, 71 U.S. (4 Wall.) 2, 120 (1866). Again, in *Home Building & Loan Ass'n v. Blaisdell*, we were taught that no emergency can create power.[53]

Finally, although the Defendants have suggested the unconstitutionality of FISA, it appears to this court that that question is here irrelevant. Not only FISA, but the Constitution itself has been violated by the Executive's TSP. As the court states in *Falvey*, even where statutes are not explicit, the requirements of the Fourth Amendment must still be met.[54] And of course, the *Zweibon* opinion of Judge Skelly Wright plainly states that although many cases hold that the President's power to obtain foreign intelligence information is vast, none suggest that he is immune from Constitutional requirements.[55]

The argument that inherent powers justify the program here in litigation must fail.

X. Practical Justifications for Exemption

First, it must be remembered that both Title III and FISA permit delayed applications for warrants, after surveillance has begun. Also, the case law has long permitted law enforcement action to proceed in cases in which the lives of officers or others are threatened in cases of "hot pursuit", border searches, school locker searches, or where emergency situations exist. See generally *Warden v. Hayden*, 387 U.S. 294 (1967); *Veronia School District v. Acton*, 515 U.S. 646

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[52]See generally *Youngstown*, 343 U.S. 579 (1952)

[53]See generally *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934)

[54]See generally *Falvey*, 540 F. Supp. 1306 (E.D.N.Y. 1982)

[55]See generally *Zweibon*, 516 F.2d 594 (D.C. Circ. 1975)

(1995); and *Michigan Department of State Police v. Sitz*, 496 U.S. 444 (1990).

Indeed, in *Zweibon*, Judge Wright enumerates a number of Defendants' practical arguments here (including judicial competence, danger of security leaks, less likelihood of criminal prosecution, delay, and the burden placed upon both the courts and the Executive branch by compliance) and finds, after long and careful analysis, that none constitutes adequate justification for exemption from the requirements of either FISA or the Fourth Amendment. *Zweibon*, 516 F.2d at 641. It is noteworthy, in this regard, that Defendants here have sought no Congressional amendments which would remedy practical difficulty.

As long ago as the *Youngstown* case, the Truman administration argued that the cumbersome procedures required to obtain warrants made the process unworkable.[56] The *Youngstown* court made short shift of that argument and, it appears, the present Defendants' need for speed and agility is equally weightless. The Supreme Court in the *Keith*[57], as well as the *Hamdi*[58] cases, has attempted to offer helpful solutions to the delay problem, all to no avail.

XI. Conclusion

For all of the reasons outlined above, this court is constrained to grant to Plaintiffs the Partial Summary Judgment requested, and holds that the TSP violates the APA; the Separation of Powers doctrine; the First and Fourth Amendments of the United States Constitution; and the statutory law.

Defendants' Motion to Dismiss the final claim of data-mining is granted, because litigation of that claim would require violation of Defendants' state secrets privilege.

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[56]See generally *Youngstown*, 343 U.S. 579 (1952)

[57]See generally *U.S. v. U.S. District Court*, 407 U.S. 297 (1972)

[58]See generally *Hamdi*, 542 U.S. 507 (2004)

The Permanent Injunction of the TSP requested by Plaintiffs is granted inasmuch as each of the factors required to be met to sustain such an injunction have undisputedly been met.[59] The irreparable injury necessary to warrant injunctive relief is clear, as the First and Fourth Amendment rights of Plaintiffs are violated by the TSP. See *Dombrowski v. Pfister*, 380 U.S. 479 (1965). The irreparable injury conversely sustained by Defendants under this injunction may be rectified by compliance with our Constitution and/or statutory law, as amended if necessary. Plaintiffs have prevailed, and the public interest is clear, in this matter. It is the upholding of our Constitution.

As Justice Warren wrote in *U.S. v. Robel*, 389 U.S. 258 (1967):

> Implicit in the term 'national defense' is the notion of defending those values and ideas which set this Nation apart. . . . It would indeed be ironic if, in the name of national defense, we would sanction the subversion of . . . those liberties . . . which makes the defense of the Nation worthwhile. *Id.* at 264.

IT IS SO ORDERED.

Date: August 17, 2006
Detroit, Michigan

s/Anna Diggs Taylor
ANNA DIGGS TAYLOR
UNITED STATES DISTRICT JUDGE

[59]It is well-settled that a plaintiff seeking a permanent injunction must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. *eBay Inc. v. MercExchange, L.L.C.* 126 S.Ct. 1837, 1839 (2006). Further, "[a] party is entitled to a permanent injunction if it can establish that it suffered a constitutional violation and will suffer "continuing irreparable injury" for which there is no adequate remedy at law." *Women's Medical Professional Corp. v. Baird*, 438 F.3d 595, 602 (6th Cir. 2006).

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing *Memorandum Order* was served upon counsel of record via the Court's ECF System to their respective email addresses or First Class U.S. mail disclosed on the Notice of Electronic Filing on **August 17, 2006**.

s/Johnetta M. Curry-Williams
Case Manager

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U.S. Supreme Court

HAZEL-ATLAS GLASS CO. v. HARTFORD-EMPIRE CO., 322 U.S. 238 (1944)

322 U.S. 238

HAZEL-ATLAS GLASS CO.
v.
HARTFORD-EMPIRE CO.
No. 398.

Rehearing Denied June 12, 1944

See 322 U.S. 772, 64 S.Ct. 1281.
Argued Feb. 9, 10, 1944.
Decided May 15, 1944.

[322 U.S. 238, 239] Mr. Stephen H. Philbin, of Boston, Mass., for petitioner.

Mr. Francis W. Cole, of Hartford, Conn., for respondent.

Mr. Justice BLACK delivered the opinion of the Court.

This case involves the power of a Circuit Court of Appeals, upon proof that fraud was perpetrated on it by a successful litigant, to vacate its own judgment entered at a prior term and direct vacation of a District Court's decree entered pursuant to the Circuit Court of Appeals' mandate.

Hazel-Atlas commenced the present suit in November, 1941, by filing in the Third Circuit Court of Appeals a petition for leave to file a bill of review in the District Court to set aside a judgment entered by that Court against Hazel in 1932 pursuant to the Third Circuit Court of Appeals' mandate. Hazel contended that the Circuit Court of Appeals' judgment had been obtained by fraud and supported this charge with affidavits and exhibits. Hartford-Empire, in whose favor the challenged judgment had been entered, did not question the appellate court's power to consider the petition, but filed counter affidavits and exhibits. After a hearing the Circuit Court concluded that, since the alleged fraud had been practiced on it rather than the District Court, it would pass on the [322 U.S. 238, 240] issues of fraud itself instead of sending the case to the District Court. An order was thereupon entered denying the petition as framed but granting Hazel leave to amend the prayer of the petition to ask that the Circuit Court itself hear and determine the issue of fraud. Hazel accordingly amended, praying that the 1932 judgments against it be vacated and for such other relief as might be just. Hartford then replied and filed additional exhibits and affidavits. The following facts were shown by the record without dispute.

In 1926 Hartford had pending an application for a patent on a machine which utilized a method of pouring glass into molds known as 'gob feeding.' The application, according to

the Circuit Court, 'was confronted with apparently insurmountable Patent Office opposition.' To help along the application, certain officials and attorneys of Hartford determined to have published in a trade journal an article signed by an ostensibly disinterested expert which would describe the 'gob feeding' device as a remarkable advance in the art of fashioning glass by machine. Accordingly these officials prepared an article entitled 'Introduction of Automatic Glass Working Machinery; How Received by Organized Labor', which referred to 'gob feeding' as one of the two 'revolutionary devices' with which workmen skilled in bottle-blowing had been confronted since they had organized. After unsuccessfully attempting to persuade the President of the Bottle Blowers' Association to sign this article, the Hartford officials, together with other persons called to their aid, procured the signature of one William P. Clarke, widely known as National President of the Flint Glass Workers' Union. Subsequently, in July 1926, the article was published in the National Glass Budget, and in October 1926 it was introduced as part of the record in support of the pending application in the Patent Office. [322 U.S. 238, 241] January 38 1928, the Patent Office granted the application as Patent No. 1, 655,391.

On June 6, 1928, Hartford brought suit in the District Court for the Western District of Pennsylvania charging that Hazel was infringing this 'gob feeding' patent, and praying for an injunction against further infringement and for an accounting for profits and damages. Without referring to the Clarke article, which was in the record only as part of the 'file-wrapper' history, and which apparently was not then emphasized by counsel, the District Court dismissed the bill on the ground that no infringement had been proved. D.C., 39 F.2d 111. Hartford appealed. In their brief filed with the Circuit Court of Appeals, the attorneys for Hartford, one of whom had played a part in getting the spurious article prepared for publication, directed the Court's attention to 'The article by Mr. William Clarke, former President of the Glass Workers' Union.' The reference was not without effect. Quoting copiously from the article to show that 'labor organizations of practical workmen recognized' the 'new and differentiating elements' of the 'gob feeding' patent owned by Hartford, the Circuit Court on May 5, 1932, held the patent valid and infringed, reversed the District Court's judgment, and directed that court to enter a decree accordingly. 3 Cir., 59 F.2d 399, 403, 404.

At the time of the trial in the District Court in 1929, where the article seemingly played no important part, the attorneys of Hazel received information that both Clarke and one of Hartford's lawyers had several years previously admitted that the Hartford lawyer was the true author of the spurious publication. Hazel's attorneys did not at that time attempt to verify the truth of the hearsay story of the article's authorship, but relied upon other defenses which proved successful. After the opinion of the Circuit Court came down on May 5, 1932, quoting the spurious [322 U.S. 238, 242] article and reversing the decree of the District Court, Hazel hired investigators for the purpose of verifying the hearsay by admissible evidence. One of these investigators interviewed Clarke in Toledo, Ohio, on May 13 and again on May 24. In each interview Clarke insisted that he wrote the article and would so swear if summoned. In the second interview the investigator asked Clarke to sign a statement telling in detail how the article was prepared, and further asked to see Clarke's files. Clarke replied that he would not 'stultify' himself by signing any 'statement or affidavit'; and that he would show the records to no one unless compelled by a

Equitable relief against fraudulent judgments is not of statutory creation. It is a judicially devised remedy fashioned to relieve hardships which, from time to time, arise from a hard and fast adherence to another court-made rule, the general rule that judgments should not be disturbed after the term of their entry has expired. Created to avert the evils of archaic rigidity, this equitable procedure has always been characterized by flexibility which enables it to meet new situations which demand equitable intervention, and to accord all the relief necessary to correct the particular injustices involved in these situations. It was this flexibility which enabled courts to meet the problem raised when leave to file a bill of review was sought in a court of original jurisdiction for the purpose of impeaching a judgment which had been acted upon by an appellate court. Such a judgment, it was said, was not subject to impeachment in such a proceeding because a trial court lacks the power to deviate from the mandate of an appellate court. The solution evolved by the courts is a procedure whereby permission to file the bill is sought in the appellate court. The hearing conducted by the appellate court on the petition, which may be filed many years after the entry of the challenged judgment, is not just a ceremonial gesture. The petition must contain the necessary averments, supported by affidavits or other acceptable evidence; and the appellate court may in the exercise of a proper discretion reject the petition, in which case a bill of review cannot be filed in the lower court. National Brake Co. v. Christensen, 254 U.S. 425 , 430-433, 41 S.Ct. 154, 156, 157.

We think that when this Court, a century ago, approved this practice and held that federal appellate courts have the power to pass upon, and hence to grant or deny, peti- [322 U.S. 238, 249] tions for bills of review even though the petitions be presented long after the term of the challenged judgment has expired, it settled the procedural question here involved. Southard v. Russell, 16 How. 547.4 To reason otherwise would be to say that although the Circuit Court has the power to act after the term finally to deny relief, it has not the power to act after the term finally to grant relief. It would, moreover, be to say that even in a case where the alleged fraud was on the Circuit Court itself, the relevant facts as to the fraud were agreed upon by the litigants, and the Circuit Court concluded relief must be granted, that Court nevertheless must send the case to the District Court for decision. Nothing in reason or precedent requires such a cumbersome and dilatory procedure. Indeed the whole history of equitable procedure, with the traditional flexibility which has enabled the courts to grant all the relief against judgments which the equities require, argues against it. We hold, therefore, that the Circuit Court on the record here presented5 had [322 U.S. 238, 250] both the duty and the power to vacate its own judgment and to give the District Court appropriate directions.

The question remains as to what disposition should be made of this case. Hartford's fraud, hidden for years but now admitted, had its genesis in the plan to publish an article for the deliberate purpose of deceiving the Patent Office. The plan was executed, and the article was put to fraudulent use in the Patent Office, contrary to law. U.S.C., Title 35, 69, 35 U.S.C.A. 69; United States v. American Bell Telephone Company, 128 U.S. 315 , 9 S.Ct. 90. From there the trail of fraud continued without break through the District Court and up to the Circuit Court of Appeals. Had the District Court learned of the fraud on the Patent Office at the original infringement trial, it would have been warranted in dismissing Hartford's case. In a patent case where the fraud certainly was not more flagrant than here, this Court said: 'Had the corruption of Clutter been disclosed at the

trial ..., the court undoubtedly would have been warranted in holding it sufficient to require dismissal of the cause of action there alleged for the infringement of the Downie patent.' Keystone Co. v. General Excavator Co., 290 U.S. 240, 246, 54 S.Ct. 146, 148; cf. Morton Salt Co. v. G. S. Suppiger Co., supra, 314 U.S. at pages 493, 494, 62 S.Ct. at pages 405, 406. So, also, could the Circuit Court of Appeals have dismissed the appeal had it been aware of Hartford's corrupt activities in suppressing the truth concerning the authorship of the article. The total effect of all this fraud, practiced both on the Patent Office and the courts, calls for nothing less than a complete denial of relief to Hartford for the claimed infringement of the patent thereby procured and enforced.

Since the judgments of 1932 therefore must be vacated, the case now stands in the same position as though Hartford's corruption had been exposed at the original trial. [322 U.S. 238, 251] In this situation the doctrine of the Keystone case, supra, requires that Hartford be denied relief.

To grant full protection to the public against a patent obtained by fraud, that patent must be vacated. It has previously been decided that such a remedy is not available in infringement proceedings, but can only be accomplished in a direct proceeding brought by the government. United States v. American Bell Telephone Company, supra.

The judgment is reversed with directions to set aside the 1932 judgment of the Circuit Court of Appeals, recall the 1932 mandate, dismiss Hartford's appeal, and issue mandate to the District Court directing it to set aside its judgment entered pursuant to the Circuit Court of Appeals' mandate, to reinstate its original judgment denying relief to Hartford, and to take such additional action as may be necessary and appropriate.

It is so ordered.

Reversed with directions.

Mr. Justice ROBERTS.

No fraud is more odious than an attempt to subvert the administration of justice. The court is unanimous in condemning the transaction disclosed by this record. Our problem is how best the wrong should be righted and the wrongdoers pursued. Respect for orderly methods of procedure is especially important in a case of this sort. In simple terms, the situation is this. Some twelve years ago a fraud perpetrated in the Patent Office was relied on by Hartford in the Circuit Court of Appeals. The court reversed a judgment in favor of Hazel, decided that Hartford was the holder of a valid patent which Hazel had infringed and, by its mandate, directed the District Court to enter a judgment in favor of Hartford. This was done and, on the strength of the judgment, Hartford and Hazel entered into an agreement of which more hereafter. So long as that judgment stands unmodified, the agreement of the parties will be unaffected by anything involved in the suit under discussion. Hazel concedely now [322 U.S. 238, 252] desires to be in a position to disregard the agreement to its profit.

The resources of the law are ample to undo the wrong and to pursue the wrongdoer and to do both effectively with due regard to the established modes of procedure. Ever since this fraud was exposed, the United States has had standing to seek nullification of Hartford's

patent. 1 The Government filed a brief as amicus below and one in this court. It has elected not to proceed for cancellation of the patent. 2

It is complained that members of the bar have knowingly participated in the fraud. Remedies are available to purge recreant officers from the tribunals on whom the fraud was practiced.

Finally, as to the immediate aim of this proceeding, namely, to nullify the judgment if the fraud procured it, and if Hazel is equitably entitled to relief, an effective and orderly remedy is at hand. This is a suit in equity in the District Court to set aside or amend the judgment. Such a proceeding is required by settled federal law and would be tried, as it should be, in open court with living witnesses instead of through the unsatisfactory method of affidavits. We should not resort to a disorderly remedy, by disregarding the law as applied in federal courts ever since they were established, in order to reach one inequity at the risk of perpetrating another.

In a suit brought by Hartford against Hazel in the Western District of Pennsylvania charging infringement of Hartford's patent No. 1,655,391, a decree was entered against Hartford March 31, 1930, on the ground that Hazel had not infringed. On appeal, the Circuit Court [322 U.S. 238, 253] of Appeals filed an opinion, May 5, 1932, reversing the judgment of the District Court and holding the patent valid and infringed. On Hazel's application, the time for filing a petition for rehearing was extended five times. On July 21, 1932, Hazel entered into a general settlement and license agreement with Hartford respecting the patent in suit and other patents, which agreement was to be effective as of July 1, 1932. Hazel filed no petition for rehearing and, on July 30, 1932, the mandate of the Circuit Court of Appeals went to the District Court. Pursuant to the mandate, that court entered its final judgment against Hazel for an injunction and an accounting. No such accounting was ever had because Hazel and Hartford had settled their differences.

November 19, 1941, Hazel presented to the Circuit Court of Appeals its petition for leave to file in the District Court a bill of review. Attached was the proposed bill. Affidavits were filed by Hazel and Hartford. The Circuit Court of Appeals heard the matter and made an order denying the petition for leave to file, holding that any fraud practiced had been practiced on the Circuit Court of Appeals and, therefore, that court should itself pass upon the question whether the mandate should be recalled and the case reopened. Leave was granted to Hazel to amend its petition to seek relief from the Circuit Court of Appeals. The order provided for an answer by Hartford and for a hearing and determination by the Circuit Court of Appeals.

The Circuit Court of Appeals, on the basis of the amended petition, the answer, and the affidavits, denied relief on the grounds: (1) That the fraud had not been effective to influence its earlier decision; (2) that the court was without power to deal with the case as its mandate had gone down and the term had long since expired; (3) that Hazel had been negligent and guilty of inexcusable delay in presenting the matter to the court; and [322 U.S. 238, 254] (4) that the only permissible procedure was in the District Court, where the judgment rested, by bill in equity in the nature of a bill of review. One judge dissented, holding that the court had power (1) to recall the cause; (2) to enter upon a trial of the issues made by the petition and answer, and (3) itself to review and revise its earlier

decision, enter a new judgment in the case on the corrected record and send a new mandate to the District Court.

As I understand the opinion of this court, while it reverses the decision below, it only partially adopts the view of the dissenting judge, for the holding is: (1) That the court below has power at this date to deal with the matter either as a new suit or as a continuation of the old one; (2) that it can recall the case from the District Court; (3) that it can grant relief; (4) that it can hear evidence and act as a court of first instance or a trial court; (5) that such a trial as it affords need not be according to the ordinary course of trial of facts in open court, by examination and cross-examination of witnesses, but that the proofs may consist merely of ex parte affidavits; and (6) that such a trial has already been afforded and it remains only, in effect, to cancel Hartford's patent.

I think the decision overrules principles settled by scores of decisions of this court which are vital to the equitable and orderly disposition of causes-principles which, upon the soundest considerations of fairness and policy, have stood unquestioned since the federal judicial system was established. I shall first briefly state these principles. I shall then as briefly summarize the reasons for their adoption and enforcement and, finally, I shall show why it would not be in the interest of justice to abandon them in this case.

1. The final and only extant judgment in the litigation is that of the District Court entered pursuant to the mandate of the Circuit Court of Appeals. The term of the [322 U.S. 238, 255] District Court long ago expired and, with that expiration, all power of that court to re-examine the judgment or to alter it ceased, except for the correction of clerical errors. The principle is of universal application to judgments at law,3 decrees in equity,4 and convictions of crime, though, as respects the latter, its result may be great individual hardship. 5 The rule might, for that reason, have been relaxed in criminal cases, if it ever is to be, for there, in contrast to civil cases, no other judicial relief is available.

In the promulgation of the Federal Rules of Civil Procedure, 28 U.S.C. A. following section 723c, this court took notice of the fact that terms of the district court vary in length and that the expiration of [322 U.S. 238, 256] the term might occur very soon, or quite a long time, after the entry of a judgment. In order to make the practice uniform Rule 60(b) provides: 'On motion the court, upon such terms as are just, may relieve a party or his legal representative from a judgment, order, or proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect. The motion shall be made within a reasonable time, but in no case exceeding six months after such judgment, order, or proceeding was taken. ... This rule does not limit the power of a court (1) to entertain an action to relieve a party from a judgment, order, or proceeding. ...' Thus there has been substituted for the term rule a definite time limitation within which a district court may correct or modify its judgments. But the salutary rule as to finality is retained and, after the expiration of six months, the party must apply, as heretofore, by bill of review-now designated a civil action-to obtain relief from a judgment which itself is final so far as any further steps in the original action are concerned.

The term rule applies with equal force to an appellate court. Over the whole course of its history, this court has uniformly held that it was without power, after the going down of the mandate, and the expiration of the term, to rehear a case or to modify its decision on

the merits. 6 And this is equally true of the circuit courts of appeal. 7 [322 U.S. 238, 257] The court below, unless we are to overthrow a century and a half of precedents, lacks power now to revise its judgment and lacks power also to send its process to the District Court and call up for review the judgment entered on its mandate twelve years ago.8 No such power is inherent in an appellate court; none such is conferred by any statute.

2. The Circuit Court of Appeals is without authority either to try the issues posed by the petition and answer on the affidavits on file, or, to do as the dissenting judge below suggests, hold a full dress trial.

The federal courts have only such powers as are expressly conferred on them. Certain original jurisdiction is vested in this court by the Constitution. Its powers as an appellate court are those only which are given by statute. 9

The circuit courts of appeal are creatures of statute. No original jurisdiction has been conferred on them. They exercise only such appellate functions as Congress has granted. The grant is plain. 'The circuit courts of appeal shall have appellate jurisdiction to review by appeal final decisions ... in the district courts ....'10 Nowhere is there any grant of jurisdiction to try cases, to [322 U.S. 238, 258] enter judgments, or to issue executions or other final process.

> '... courts created by statute must look to the statute as the warrant for their authority; certainly they cannot go beyond the statute, and assert an authority with which they may not be invested by it, or which may be clearly denied to them.'11

This court has never departed from the view that circuit courts of appeal are statutory courts having no original jurisdiction but only appellate jurisdiction. 12

Neither this court13 nor a circuit court14 of appeals may hear new evidence in a cause appealable from a lower court. No suggestion seems ever before to have been made that they may constitute themselves trial courts, embark on the trial of what is essentially an independent cause and enter a judgment of first instance on the facts and the law. But this is what the opinion sanctions.

3. The temptation might be strong to break new ground in this case if Hazel were otherwise remediless. Such is [322 U.S. 238, 259] not the fact. The reports abound in decisions pointing the way to relief if, in equity, Hazel is entitled to any.

Since Lord Bacon's day a decree in equity may be reversed or revised for error of law,15 for new matter subsequently occurring, or for after discovered evidence. And this head of equity jurisdiction has been exercised by the federal courts from the foundation of the nation. 16 Such a bill is an original bill in the nature of a bill of review. Equity also, on original bills, exercises a like jurisdiction to prevent unconscionable retention or enforcement of a judgment at law procured by fraud, or mistake unmixed with negligence attributable to the losing party, or rendered because he was precluded from making a defense which he had. Such a bill may be filed in the federal court which rendered the judgment or in a federal court other than the court, federal or state, which rendered it. 17 [322 U.S. 238, 260] Whether the suit concern a decree in equity or a judgment at law, it is

for relief granted by equity against an unjust and inequitable result, and is subject to all the customary doctrines governing the award if equitable relief.

New proof to justify a bill of review must be such as has come to light after judgment and such as could not have been obtained when the judgment was entered. The proffered evidence must not only have been unknown prior to judgment, but must be such as could not have been discovered by the exercise of reasonable diligence in time to permit its use in the trial. Unreasonable delay, or lack of diligence in timely searching for the evidence, are fatal to the right to a bill of review, and a party may not elect to forego inquiry and let the cause go to judgment in the hope of a favorable result and then change his position and attempt, by means of a bill of review, to get the benefit of evidence he neglected to produce. These principles are established by many of the cases cited in notes 16 and 17, and specific citation is unnecessary. The principles are well settled. And, in this class of cases as in others, although equity does not condone wrongdoing, it will not extend its aid to a wrongdoer; in [322 U.S. 238, 261] other words, the complainant must come into court with clean hands.

4. Confessedly the opinion repudiates the unbroken rule of decision with respect to the finality of a judgment at the expiration of the term; that with respect to jurisdiction of an appellate court to try issues of fact upon evidence, and that with respect to the necessity for resorting to a bill of review to modify or set aside a judgment once it has become final. Perusal of the authorities cited will sufficiently expose the reasons for these doctrines. It is obvious that parties ought not to be permitted indefinitely to litigate issues once tried and adjudicated. 18 There must be an end to litigation. If courts of first instance, or appellate courts, were at liberty, on application of a party, at any time to institute a summary inquiry for the purpose of modifying or nullifying [322 U.S. 238, 262] a considered judgment, no reliance could be placed on that which has been adjudicated and citizens could not, with any confidence, act in the light of what has apparently been finally decided.

If relief on equitable grounds is to be obtained it is right that it should be sought by a formal suit upon adequate pleadings and should be granted only after a trial of issues according to the usual course of the trial of questions of fact. A court of first instance is the appropriate tribunal, and the only tribunal, equipped for such a trial. Appellate courts have neither the power nor the means to that end.

On the strongest grounds of public policy bills of review are disfavored, since to facilitate them would tend to encourage fraudulent practices, resort to perjury, and the building of fictitious reasons for setting aside judgments.

5. I think the facts in the instant case speak loudly for the observance, and against the repudiation, of all the rules to which I have referred. The court's opinion implies that the disposition here made is justified by uncontradicted facts, but the record demonstrates beyond question that serious controverted issues ought to be resolved before Hazel may have relief.

In 1926 Hartford brought a suit for infringement of the Peiler Patent against Nivison-Weiskopf Company in the Southern District of Ohio. Counsel for the defendants in that

case were Messrs. William R. and Edmund P. Wood of Cincinnati. About the same time Hartford brought a similar suit for infringement against Kearns-Gorsuch Bottle Company, a subsidiary of Hazel. Counsel for Kearns were the same who have represented Hazel throughout this case.

In 1928 Hartford brought suit against Hazel in the Western District of Pennsylvania for a like infringement. The same counsel represented Hazel. The Ohio suits [322 U.S. 238, 263] came to trial first. In them a decision was rendered adverse to Hartford. Appeals were taken to the Circuit Court of Appeals of the Sixth Circuit, were consolidated, and counsel for the defendants appeared together in that court, which decided adversely to Hartford (Hartford-Empire Co. v. Nivison-Weiskopf Co., 58 F.2d 701).

In the preparation for the defense of the Nivison suit, William R. Wood called upon Clarke and interviewed him in the presence of a witness. Clarke admitted that Hatch of Hartford had prepared the article published under Clarke's name. In the light of this fact the Messrs. Wood notified Hartford that they would require the presence of Hatch at the trial of the suit and Hatch was in attendance during that trial. Repeatedly during the trial Hatch admitted to the Messrs. Wood that he was in fact the author of the article. It was well understood that the defendant wanted him present so that if any reference to or reliance upon the article developed they could call Hatch and prove the facts. There was no such reference or reliance.

As counsel for the various defendants opposed to Hartford were acting in close cooperation, Messrs. Wood attended the trial of the Hartford- Hazel suit in Pittsburgh, which must have occurred in 1929 or early 1930. (See 39 F.2d 111.) One or other of the Messrs. Wood was present throughout that trial and Edmund P. Wood was in frequent consultation with the Hazel representatives and counsel. Hazel's counsel was the same at that trial as in the present case. The Messrs. Wood told Hazel's counsel and representatives that Clarke had admitted Hatch was the author of the article and that Hatch had also freely admitted the same thing. Hazel's counsel and representatives discussed at length, in the presence of Mr. Wood, the advisability of attacking the authenticity of the article. Counsel for Hazel, in these conferences, took the position that 'an attack on the article might be a [322 U.S. 238, 264] boomerang in that it might emphasize the truth of the only statements in the article' which he regarded as of any possible pertinence. Mr. Wood's affidavit giving in detail the discussions and the conclusion of Hazel's counsel is uncontradicted, and demonstrates that Hazel's counsel knew the facts with regard to the Clarke article and knew the names of witnesses who could prove those facts. After due deliberation, it was decided not to offer proof on the subject.

The District Court found in favor of Hazel, holding that Hazel had not infringed. Hartford appealed to the Third Circuit Court of Appeals. In that court Hartford's counsel referred in argument to the Clarke article and the court, in its decision, referred to the article as persuasive of certain facts in connection with the development of glass machinery. The Circuit Court of Appeals for the Sixth Circuit rendered its decision in the Nivison and Kearns cases on May 12, 1932, and the Third Circuit Court of Appeals rendered its decision in the Hartford-Hazel case on May 6, 1932.

Counsel for Hazel was then, nearly ten years prior to the filing of the instant petition, confronted with the fact that, in its opinion, the Circuit Court of Appeals had accredited the article. Naturally counsel was faced with the question whether he should bring to the court's attention the facts respecting that article. As I have said, he asked and was granted five extensions of time for filing a petition for rehearing. Meantime negotiations were begun with Hartford for a general settlement and for Hazel's joining in the combination and patent pool of which Hartford was the head and front. At the same time, however, evidently as a precaution against the breakdown of the negotiations, Hazel's counsel obtained affidavits to be signed by the Messrs. Wood setting forth the facts which they had gleaned concerning the author- [322 U.S. 238, 265] ship of the Clarke article. These affidavits were intended for use in the Third Circuit Court of Appeals case for they were captioned in that case. Being made by reputable counsel who are accredited by both parties to this proceeding they were sufficient basis for a petition for rehearing while the case was still in the bosom of the Circuit Court of Appeals. It is idle to suggest that counsel would not have been justified in applying to the court on the strength of them.

Had counsel filed a petition and attached to it the affidavits of the Messrs. Wood, without more, he would have done his duty to the court in timely calling its attention to the fraud which had been perpetrated. But more, the court would undoubtedly have reopened the case, granted rehearing, and remanded the case to the District Court with permission to Hazel to summon and examine witnesses. It is to ignore realities to suggest, as the opinion does, that counsel for Hazel was helpless at that time and in the then existing situation.

But counsel did not rest there. He commissioned an investigator who interviewed a labor leader named Maloney in Philadelphia. This man refused to talk but the investigator's report would make it clear to anyone of average sense that he knew about the origin of the article, and any lawyer of experience would not have hesitated to summon him as a witness and put him under examination. Moreover, the investigator interviewed Clarke and his report of the evasive manner and answers of Clarke convince me, and I believe would convince any lawyer of normal perception, that the Woods' affidavits were true and that Clarke would have so admitted if called to the witness stand. Most extraordinary is the omission of Hazel's counsel, although then in negotiation with Hartford for a settlement, to make any inquiry concerning Hatch or to interview Hatch, or to have him interviewed [322 U.S. 238, 266] when counsel had been assured that Hatch had no inclination to prevaricate concerning his part in the preparation of the article.

The customary modes of eliciting truth in court may well establish that in the circumstances Hazel's counsel deliberately elected to forego any disclosure concerning the Clarke article and to procure instead the favorable settlement he obtained from Hartford.

In any event, we know that, on July 21, 1932, Hartford and Hazel entered into an agreement, which is now before this court in the record in Nos. 7-11 of the present term, on appeal from the District Court for Northern Ohio. Under the agreement Hazel paid Hartford $1,000,000. Hartford granted Hazel a license on all machines and methods embodying patented inventions for the manufacture of glass containers at Hartford's lowest royalty rates. Hartford agreed to pay Hazel one-third of its net royalty income to

and including January 3, 1945, over and above $850,000 per annum. At the same time, Hazel entered into an agreement with the Owens-Illinois Glass Company, another party to the Hartford patent pool and the conspiracy to monopolize the glass manufacturing industry found by the District Court.

In the autumn of 1933 counsel for Shawkee Company, defendant in another suit by Hartford, obtained documents indicating Hatch's responsibility for the Clarke article, and wrote counsel for Hazel inquiring what he knew about the matter. Hazel's counsel, evidently reluctant to disturb the existing status, replied that, while he suspected Hartford might have been responsible for the article, he did not at the time at trial, know of the papers which counsel for Shawkee had unearthed, and added that his recollection was then 'too indefinite to be positive and I would have to go through the voluminous mass of papers relating to the various Hartford-Empire [322 U.S. 238, 267] litigations, including correspondence, before I could be more definite.'

The District Court for Northern Ohio has found that the 1932 agreement and coincident arrangements placed Hazel in a preferred position in the glass container industry and drove nearly everyone else in that field into taking licenses from Hartford, stifled competition, and gave Hazel, as a result of rebates paid to it, a great advantage over all competitors in the cost of its product. It is uncontested that, as a result of the agreement, Hazel has been repaid the $1,000,000 it paid Hartford and has received upwards of $800,000 additional.

In 1941 the United States instituted an equity suit in Northern Ohio against Hartford, Hazel, Owens Illinois, and other corporations and individuals to restrain violation of the antitrust statutes. That court found that the defendants conspired to violate the antitrust laws and entered an injunction on October 8, 1942. (46 F.Supp. 541.) Hazel and other defendants appealed to this court. The same counsel represented Hazel in that suit, and in the appeal to this court, as represented the company in the District Court and in the Third Circuit Court of Appeals in this case. In its brief in this court Hazel strenuously contended that the license agreement executed in 1932, and still in force, was not violative of the antitrust laws and should be sustained.

Of course, in 1941 counsel for Hazel faced the possibility that the District Court in Ohio might find against Hazel, and that this court might affirm its decision. Considerations of prudence apparently dictated that Hazel should cast an anchor to windward. Accordingly, November 19, 1941, it presented its petition for leave to file a bill of review in the District Court for Western Pennsylvania and attached a copy of the proposed bill. In answer to questions at our bar as to the ultimate purpose of this proceed- [322 U.S. 238, 268] ing, counsel admitted that, if successful in it, Hazel proposed to obtain every resultant benefit it could.

In the light of the circumstances recited it becomes highly important closely to scrutinize Hazel's allegations. It refers to the use by the Circuit Court of Appeals of the Clarke article in the opinion and then avers:

> 'That although prior to the decision of this Court your petitioner suspected and believed that the article had been written by one of plaintiff's employees, instead

> of by Clarke, and had been caused by plaintiff to be published in the National Glass Budget, petitioner did not know then or until this year material and pertinent facts which, if petitioner had then known and been able to present to this Court, should have resulted in a decision for petitioner. (Italics added)
> 'That such facts were disclosed to petitioner for the first time in suit of United States of America v. Hartford et al., in the United States District Court for the Northern District of Ohio, and are specified in paragraphs 4, 5 and 6 of the annexed bill of review, which is made a part hereof.
> 'That your petitioner could not have ascertained by the use of proper and reasonable diligence the newly discovered facts prior to the said suit, and that the newly discovered evidence is true and material and should cause a decree in this cause different from that heretofore made.'

In the proposed bill of review these allegations are repeated and it is added that the new facts ascertained consist of the testimony of Hatch in the antitrust suit and five letters written by various parties connected with the conspiracy and a memorandum prepared by Hatch which were in evidence in that suit. The bill then adds:

> 'The new matter specified in the preceding paragraphs 4, 5 and 6 is material, it only recently became known to plaintiff, which could not have previously obtained it with due diligence, and such new evidence if it had been previously known to this Court and to the Circuit Court [322 U.S. 238, 269] of Appeals would have caused a decision different from that reached.'

Neither the petition nor the bill is under oath but there is attached an affidavit of counsel for Hazel in which he states that in or before 1929 Hazel 'had suspected, and I believed,' that the Clarke article had been written by Hatch and that Hartford had caused the article to be published, adding: 'having been so told by the firm of Messrs. Wood and Wood, Cincinnati lawyers, who said they had so been told by Clarke and also by Hatch.' The affidavit also attaches the reports of the investigator above referred to and refers to the exhibits and testimony in the antitrust suit in Northern Ohio.

In the light of the facts I have recited, it seems clear that if Hazel's conduct be weighed merely in the aspect of negligent failure to investigate, the decision of this court in Toledo Scale Co. v. Computing Scale Co., 261 U.S. 399, 43 S.Ct. 458, may well justify a holding, on all available evidence, that, at least, Hazel was guilty of inexcusable negligence in not seeking the evidence to support an attack upon the decree. But it is highly possible that, upon a full trial, it will be found that Hazel held back what it knew and, if so, is not entitled now to attack the original decree. In Scotten v. Littlefield, 235 U.S. 407, 35 S.Ct. 125, in affirming the denial of a bill of review, this court said that if the claim now made was 'not presented to the court of appeals when there on appeal it could not be held back and made the subject of a bill of review, as is now attempted to be done.' Repeatedly this court has held that one will not be permitted to litigate by bill of review a question which it had the opportunity to litigate in the main suit, whether the litigant purposely abstained from bringing forward the defense or negligently omitted to prosecute inquiries which would have made it available. 19 [322 U.S. 238, 270] And certainly an issue of such importance affecting the validity of a judgment, should never be tried on affidavits. 20

As I read the opinion of the court, it disregards the contents of many of the affidavits filed in the cause and holds that solely because of the fraud which was practiced on the Patent Office and in litigation on the patent, the owner of the patent is to be amerced and in effect fined for the benefit of the other party to the suit, although that other comes with unclean hands21 and stands adjudged a party to a conspiracy to benefit over a period of twelve years under the aegis of the very patent it now attacks for fraud. To disregard these considerations, to preclude inquiry concerning these matters, is recklessly to punish one wrongdoer for the benefit of another, although punishment has no place in this proceeding.

Hazel well understood the course of decision in federal courts. It came into the Circuit Court of Appeals with a petition for leave to file a bill of review, a procedure required by long settled principles. Inasmuch as the judgment it attacked had been entered as a result of the action of the Circuit Court of Appeals, Hazel properly applied to that court for leave to file its bill in the District Court. 22 The respondent did not object on procedural grounds to the Circuit Court of Appeals considering and acting on the petition. That court of its own motion denied the petition and permitted amendment to pray relief there. [322 U.S. 238, 271] On the question what amounts to a sufficient showing to move an appellate court to grant leave to file a bill of review in the trial court, the authorities are not uniform. Where the lack of merit is obvious, appellate courts have refused leave,23 but where the facts are complicated it is often the better course to grant leave and to allow available defenses to be made in answer to the bill. 24 In the present instance, I think it would have been proper for the court to permit the filing of the bill in the District Court where the rights of the parties to summon, to examine, and to cross examine witnesses, and to have a deliberate and orderly trial of the issues according to the established standards would be preserved.

I should reverse the order of the Circuit Court of Appeals with directions to permit the filing of the bill in the District Court.

Mr. Justice REED and Mr. Justice FRANKFURTER join in this opinion.

The CHIEF JUSTICE agrees with the result suggested in this dissent.

Footnotes

[Footnote 1] See, e.g., Art Metal Works, Inc., v. Abraham & Strauss, Inc., 2 Cir ., 107 F.2d 940 and 944; Publicker v. Shallcross, 3 Cir., 106 F.2d 949, 126 A.L.R. 386; Chicago, R.I. & P. Ry. Co. v. Callicotte, 8 Cir., 267 F. 799; Pickens v. Merriam, 9 Cir., 242 F. 363; Lehman v. Graham, 5 Cir., 135 F. 139; Bolden v. Sloss-Sheffield Steel & Iron Co., 215 Ala. 334, 110 So. 574, 49 A.L.R. 1206. For a collection of early cases see Note (1880) 20 Am. Dec. 160.

[Footnote 2] See Whiting v. Bank of the United States, 13 Pet. 6, 13; Dexter v. Arnold, Fed.Cas.No.3,856, 5 Mason 303, 308-315. See, also, generally, 3 Ohlinger's Federal Practice pp. 814-818; 3 Freeman on Judgments (5th ed.) 1191; Note (1880) 20 Am.Dec. 160, supra.

[Footnote 3] See 3 Freeman on Judgments (5th ed.) 1178, 1779.

[Footnote 4] See also Tyler v. Magwire, 17 Wall. 253, 283: 'Repeated decisions of this court have established the rule that a final judgment or decree of this court is conclusive upon the parties, and that it cannot be re-examined at a subsequent term, except in cases of fraud, as there is no act of Congress which confers any such authority.' (Italics supplied.)

[Footnote 5] We do not hold, and would not hold, that the material questions of fact raised by the charges of fraud against Hartford could, if in dispute, be finally determined on ex parte affidavits without examination and cross examination of witnesses. It should again be emphasized that Hartford has never questioned the accuracy of the various documents which indisputably show fraud on the Patent Office and the Circuit Court, and has not claimed, either here or below, that a trial might bring forth evidence to disprove the facts as shown by these documents. And insofar as a trial would serve to bring forth additional evidence showing that Hazel was not diligent in uncovering these facts, we already have pointed out that such evidence would not in this case change the result.

Moreover, we need not decide whether, if the facts relating to the fraud were in dispute and difficult of ascertainment, the Circuit Court here should have held hearings and decided the case or should have sent it to the District Court for decision. Cf. Art Metal Works, Inc., v. Abraham & Strauss, Inc., supra, Note 1.

[Footnote 1] United States v. American Bell Telephone Co., 128 U.S. 315 , 9 S.Ct. 90; Id., 167 U.S. 224, 238 , 17 S.Ct. 809.

[Footnote 2] The facts with respect to the fraud practiced on the Patent Office have been known for some years.

[Footnote 3] Bank of United States v. Moss. 6 How. 31, 38; Roemer v. Simon, 91 U.S. 149 ; Phillips v. Negley, 117 U.S. 665, 672 , 678 S., 6 S.Ct. 901, 903, 906; Hickman v. Fort Scott, 141 U.S. 415 , 12 S.Ct. 9; Tubman v. Baltimore & O.R. Co., 190 U.S. 38 , 23 S.Ct. 777; Wetmore v. Karrick, 205 U.S. 141, 151 , 27 S.Ct. 434, 436, 437; In re Metropolitan Trust Co., 218 U.S. 312, 320 , 31 S.Ct. 18, 20; Delaware L. & W.R. Co. v. Rellstab, 276 U.S. 1, 5 , 48 S.Ct. 203; Realty Acceptance Corp. v. Montgomery, 284 U.S. 547, 549 , 52 S.Ct. 215.

[Footnote 4] Cameron v. McRoberts, 3 Wheat. 591; Sibbald v. United States, 12 Pet. 488, 492; Washington Bridge Co. v. Stewart, 3 How. 413, 426; Central Trust Co. v. Grant Locomotive Works, 135 U.S. 207 , 10 S.Ct. 736; Wayne Gas Co. v. Owens Co., 300 U.S. 131, 136 , 57 S.Ct. 382, 385; Sprague v. Ticonic Bank, 307 U.S. 161, 169 , 59 S.Ct. 777, 781.

[Footnote 5] United States v. Mayer, 235 U.S. 55, 67 , 35 S.Ct. 16, 18. In this case one Freeman was convicted in the District Court. After he had taken an appeal to the Circuit Court of Appeals he filed, after the term had expired, a motion to set aside the judgment on the ground that a juror wilfully concealed bias against the defendant when examined on his voir dire. After hearing this motion the District judge found as a fact that the juror had been guilty of misconduct and that the defendant and his counsel neither had knowledge of the wrong nor could have discovered it earlier by due diligence. The

District judge was in doubt whether, after the expiration of the term, he had power to deal with the judgment of conviction. The Circuit Court of Appeals certified the question to this court which, in a unanimous opinion, rendered after full argument by able counsel, held in accordance with all earlier precedents that, even in a case of such hardship, the District Court had no such power.

[Footnote 6] Hudson v. Guestier, 7 Cranch 1; Jackson v. Ashton, 10 Pet. 480; Sibbald v. United States, supra, 12 Pet. at page 492; Washington Bridge Co. v. Stewart, supra; Brooks v. Burlington & S. W. Railroad Co., 102 U.S. 107 ; Barney v. Friedman, 107 U.S. 629 , 2 S.Ct. 830; Hickman v. Fort Scott, supra, 141 U.S. at page 419, 12 S.Ct. at page 10; Bushnell v. Crooke Mining Co., 150 U.S. 82 , 14 S.Ct. 22.

[Footnote 7] Ex parte National Park Bank, 256 U.S. 131 , 41 S.Ct. 403. 'That court was powerless to modify the decree after the expiration of the term at which it was entered. If the omission in the decree had been adequately called to the court's attention during the term it would doubtless have corrected the error complained of, or relief might have been sought in this court by a petition for a writ of certiorari. The bank failed to avail itself of remedies open to it.' 256 U.S. at page 133, 41 S. Ct. at page 404. The circuit courts of appeal have uniformly observed the rule thus announced. Hart v. Wiltsee, 1 Cir., 25 F.2d 863; Nachod v. Engineering & Research Corp., 2 Cir., 108 F.2d 594; Montgomery v. Realty Acceptance Corp., 3 Cir., 51 F.2d 642; Foster Bros. Mfg. Co. v. N.L. R.B., 4 Cir., 90 F.2d 948; Wichita Royalty Co. v. City National Bank, 5 Cir., 97 F.2d 249; Hawkins v. Cleveland C.C. & St. L. Ry., 7 Cir., 99 F. 322; Walsh Construction Co. v. United States Guarantee Co., 8 Cir., 76 F. 2d 240; Waskey v. Hammer, 9 Cir., 179 F. 273.

[Footnote 8] Sibbald v. United States, supra, 12 Pet. at page 492; Roemer v. Simon, 91 U.S. 149 ; In re Sanford Fork & Tool Co., 160 U.S. 247 , 16 S.Ct. 291.

[Footnote 9] Ex parte Bollman, 4 Cranch 75, 93.

[Footnote 10] Judicial Code 128 as amended, 28 U.S.C. 225, 28 U.S.C.A. 225.

[Footnote 11] Cary v. Curtis, 3 How. 236, 245, 11 L.Ed.576. See Sheldon v. Sill, 8 How. 441, 449; Commonwealth of Kentucky v. Powers, 201 U.S. 1, 24 , 26 S.Ct. 387, 393, 5 Ann.Cas. 692.

[Footnote 12] Whitney v. Dick, 202 U.S. 132, 137 , 26 S.Ct. 584, 586; United States v. Mayer, supra, 225 U.S. at page 65, 35 S.Ct. at page 18; Realty Acceptance Corp. v. Montgomery, supra, 284 U.S. at page 549, 52 S.Ct. at page 215.

[Footnote 13] Russell v. Southard, 12 How. 139, 158, 159; United States v. Knight's Adm'r, 1 Black 488; Roemer v. Simon, supra. In the Russell case Chief Justice Taney said (12 How. 159): 'It is very clear that affidavits of newly-discovered testimony cannot be received for such a purpose. This court must affirm or reverse upon the case as it appears in the record. We cannot look out of it, for testimony to influence the judgment of this court sitting, as an appellate tribunal. And, according to the practice of the court of chancery from its earliest history to the present time, no paper not before the court below can be read on the hearing of an appeal. Eden v. Earl Bute, 1 Bro.Par.Cas. 465; 3 Bro.Par.Cas. 546; Studwell v. Palmer, 5 Paige (N.Y.) 166.

'Indeed, if the established chancery practice had been otherwise, the act of Congress of March 3d, 1803, expressly prohibits the introduction of new evidence, in this court, on the hearing of an appeal from a circuit court, except in admiralty and prize causes.'

[Footnote 14] Realty Acceptance Corp. v. Montgomery, supra, 284 U.S. at page 550, 551, 52 S.Ct. at page 216.

[Footnote 15] A bill filed to correct error of law apparent on the record is called a strict bill of review and some rules as to time are peculiarly applicable to such bills. See Whiting v. Bank of United States, 13 Pet. 6, 13, 14, 15; Shelton v. Van Kleeck, 106 U.S. 532 ; Central Trust Co. v. Grant Locomotive Works, 135 U.S. 207 , 10 S.Ct. 736. Street, Federal Equity Practice 2129 et seq. With this type of bill we are not here concerned.

[Footnote 16] Ocean Ins. Co. v. Fields, Fed.Cas.No.10,406, 2 Story 59; Whiting v. Bank of United States, supra; Southard v. Russell, 16 How. 547; Minnesota Co. v. St. Paul Co., 2 Wall. 609; Purcell v. Miner, 4 Wall. 519 note; Rubber Co. v. Goodyear, 9 Wall. 805; Easley v. Kellom, 14 Wall. 279; Putnam v. Day, 22 Wall. 60; Buffington v. Harvey, 95 U.S. 99 ; Craig v. Smith, 100 U.S. 226 ; Shelton v. Van Kleeck, supra; Pacific R.R. of Missouri v. Missouri Pacific Ry. Co., 111 U.S. 505 , 4 S.Ct. 583; Central Trust Co. v. Grant Locomotive Works, supra; Boone County v. Burnington & M.R.R. Co., 139 U.S. 684 , 11 S.Ct. 687; Hopkins v. Hebard, 235 U.S. 287 , 35 S.Ct. 26; Scotten v. Littlefield, 235 U.S. 407 , 35 S.Ct. 125; National Brake & Electric Co. v. Christensen, 254 U.S. 425 , 41 S.Ct. 154; Simmons Co. v. Grier Bros. Co., 258 U.S. 82 , 42 S.Ct. 196; Jackson v. Irving Trust Co., 311 U.S. 494, 499 , 61 S.Ct. 326, 328.

[Footnote 17] Logan v. Patrick, 5 Cranch 288; Marine Ins. Co. v. Hodgson, 7 Cranch 332; Dunn v. Clarke, 8 Pet. 1; Truly v. Wanzer, 5 How. 141; Creath's Adm'r v. Sims, 5 How. 192; Humphreys v. Leggett, 9 How. 297; Walker v. Robbins, 14 How. 584; Hendrickson v. Hinckley, 17 How. 443; Leggett v. Humphreys, 21 How. 66; Gue v. Tide Water Canal Co., 24 How. 257; Freeman v. Howe, 24 How. 450;

Kibbe v. Benson, 17 Wall. 624; Crim v. Handley, 94 U.S. 652 ; Brown v. County of Buena Vista, 95 U.S. 157 ; United States v. Throckmorton, 98 U.S. 61 ; Bronson v. Schulten, 104 U.S. 410 ; Embry v. Palmer, 107 U.S. 3 , 2 S.Ct. 25; White v. Crow, 110 U.S. 183 , 4 S.Ct. 71; Krippendorf v. Hyde, 110 U.S. 276 , 4 S.Ct. 27; Johnson v. Waters, 111 U.S. 640 , 4 S.Ct. 619; Richards v. Mackall, 124 U.S. 183 , 8 S.Ct. 437; Arrowsmith v. Gleason, 129 U.S. 86 , 9 S.Ct. 237; Knox County v. Harshman, 133 U.S. 152 , 10 S.Ct. 257; Marshall v. Holmes, 141 U.S. 589 , 12 S.Ct. 62; North Chicago Rolling Mill Co. v. St. Louis Ore & Steel Co., 152 U.S. 596 , 14 S.Ct. 710; Robb v. Vos, 155 U.S. 13 , 15 S.Ct. 4; Howard v. DeCordova, 177 U.S. 609 , 20 S.Ct. 817; United States v. Beebe, 180 U.S. 343 , 21 S.Ct. 371; Pickford v. Talbott, 225 U.S. 651 , 32 S.Ct. 687; Simon v. Southern Ry. Co., 236 U.S. 115 , 35 S.Ct. 255; Wells Fargo & Co. v. Taylor, 254 U.S. 175 , 41 S.Ct. 93.

[Footnote 18] It has frequently been said that where the ground for a bill of review is fraud, review will not be granted unless the fraud was extrinsic. See United States v. Throckmorton, 98 U.S. 61 . The distinction between extrinsic and intrinsic fraud is not

technical but substantial. The statement that only extrinsic fraud may be the basis of a bill of review is merely a corollary of the rule that review will not be granted to permit relitigation of matters which were in issue in the cause and are, therefore, concluded by the judgment or decree. The classical example of intrinsic as contrasted with extrinsic fraud is the commission of perjury by a witness. While perjury is a fraud upon the court, the credibility of witnesses is in issue, for it is one of the matters on which the trier of fact must pass in order to reach a final judgment. An allegation that a witness perjured himself is insufficient because the materiality of the testimony, and opportunity to attack it, was open at the trial. Where the authenticity of a document relied on as part of a litigant's case is material to adjudication, as was the grant in the Throckmorton case, and there was opportunity to investigate this matter, fraud in the preparation of the document is not extrinsic but intrinsic and will not support review. Any fraud connected with the preparation of the Clarke article in this case was extrinsic, and, subject to other relevant rules, would support a bill of review.

[Footnote 19] Hendrickson v. Hinckley, supra, 17 How. at page 446; Rubber Co. v. Goodyear, supra, 9 Wall. at page 806; Crim v. Handley, supra, 94 U.S. at page 660; Bronson v. Schulten, supra, 104 U.S. at pages 417, 418; Richards v. Mackall, 124 U.S. at pages 188, 189, 8 S.Ct. at page 440; Boone County v. Burlington & M.R.R. Co., supra, 139 U.S. at page 693, 11 S.Ct. at page 689; Pickford v. Talbott, supra, 225 U.S. at page 658, 32 S.Ct. at page 689.

[Footnote 20] Jackson v. Irving Trust, supra, 311 U.S. at page 499, 61 S.Ct. at page 328; Sorenson v. Sutherland, 2 Cir., 109 F.2d 714, 719.

[Footnote 21] Creath's Admr. v. Sims, supra, 5 How. at page 204.

[Footnote 22] Southard v. Russell, supra, 16 How. at pages 570, 571; Purcell v. Miner, supra, 4 Wall. 519 note; Rubber Co. v. Goodyear, supra; National Brake & Electric Co. v. Christensen, supra, 254 U.S. at page 431, 41 S.Ct. at page 156; Simmons Co. v. Grier Bros. Co., supra, 258 U.S. at page 91, 42 S.Ct. at page 199.

[Footnote 23] Purcell v. Miner, supra; Rubber Company v. Goodyear, supra.

[Footnote 24] Ocean Insurance Co. v. Fields, Fed.Cas.No.10,406, 2 Story 59; In re Gamewell Fire-Alarm Tel. Co., 1 Cir., 73 F. 908; Raffold Process Corp. v. Castanea Paper Co., 3 Cir., 105 F.2d 126.

Theory of the Case

"Villainy wears many disguises, none so dangerous as the mask of virtue." State Justice Institute, W.A. Drew Edmondson, Jim Petro, Deborah J. Groom, William F. Downes, Marsha J. Pechman, Robert J. Bryan, Lawrence K. Karlton, Franklin D. Burgess, Joe Heaton, Betty Montgomery, Bob Taft, First National Bank, John & Jane Doe, Rob McKenna, Bill Lockyer, Greg Abbott, Roy Cooper, CAN Surety, Westfield Insurance, and Gretchen C.F. Shappert,are technically thugs where "thug" is defined as a particular type of criminal who succeeds in getting appointed or elected to a position of authority, then uses that position as a cover for a life of crime. A thug then , is a two-faced person who holds out the "face" of propriety while leading a life of crime such as are Gretchen C.F. Shappert, W.A. Drew Edmondson, Jim Petro, Deborah J. Groom, William F. Downes, Marsha J. Pechman, Robert J. Bryan, Lawrence K. Karlton, Franklin D. Burgess, Joe Heaton, Betty Montgomery, Bob Taft, First National Bank, John & Jane Doe, Rob McKenna, Bill Lockyer, Greg Abbott, Roy Cooper, CAN Surety, Westfield Insurance . To understand the absolute heinous criminal nature of Gretchen C.F. Shappert, W.A. Drew Edmondson, Jim Petro, Deborah J. Groom, William F. Downes, Marsha J. Pechman, Robert J. Bryan, Lawrence K. Karlton, Franklin D. Burgess, Joe Heaton, Betty Montgomery, Bob Taft, First National Bank, John & Jane Doe, Rob McKenna, Bill Lockyer, Greg Abbott, Roy Cooper, CAN Surety, Westfield Insurance, one must examine the extra-legal system, its mechanics, its obscenities, and its pervasiveness.

The legal system

The legitimate legal system has its organic document in America, being the Constitution of the United States. Appurtenant to the Constitution, Congress is empowered to make laws including the creation of the federal judiciary and delineating certain statutes passed by

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Congress, which, through proper process, results and cases and controversies to be resolved before the federal judiciary including the federal circuit courts. The process of resolving cases and controversies is controlled by Congress' promulgation of Federal Rules of Procedure and the Federal Rules of Evidence along with adherence to the Code of Conduct for United States Judges, the Code of Conduct for Judicial Employees, and the oath found at 28 U.S.C. δ 453. Proceedings which are consistent with Federal Rules of Procedure and the Federal Rules of Evidence along with adherence to the Code of Conduct for the United States Judges, the Code of Conduct for Judicial Employees, and the oath found at 28 U.S.C. δ 453 are legal in nature. After filing for review of the jurisdictional issues in 06-6215 we found through the Hazel- Atlas Glass cite and the 28 U.S.C. 1292(a)(1) that there is a conflict of two courts. In subsequent briefs, published findings of fact and conclusions of law should enumerate the exact reasons why this Court is not authorized by 28 U.S.C. 1292(a)(1) to entertain appellate review of interlocutory orders of the United States District Courts ("USDC").

Jurisdiction may be challenged at any stage of a proceeding. U.S. v. Anderson, 60 F. Supp. 649 (DCUS Wash. 1945). Jurisdiction is never presumed, must always be proven, and cannot be waived by a defendant. U.S. v. Rogers, 23 F. 658 (DCUS Ark. 1885).

Issue Number One:

The "United States of America"

and the "United States"

Are Not One and the Same

This Court will please confirm that the term "United States of America" is a term of art with a meaning that has been fixed by two centuries of American history. It appears in the Preamble; in Article II, Section 1, Clause 1 ("2:1:1"); and in Article VII, of the Constitution for the United

States of America, as lawfully amended (hereinafter "U.S. Constitution"). That term means and includes the 50 States which are united by, and under, the U.S. Constitution; it *can* not and *does* not mean anything else.

Moreover, in a standing decision of the U.S. Supreme Court, Congress was told, in no uncertain terms, that it cannot re-define any terms found in the U.S. Constitution. This is so because "Congress ... cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully exercised." Eisner v. Macomber, 252 U.S. 189 (1920); see also Hooven & Allison v. Evatt, 324 U.S. 652 (1945) ("United States" has 3 meanings.)

Plaintiff submits that this prohibition (hereinafter the "Eisner Prohibition") is controlling in the instant appeal.

As a general rule, in the U.S. Constitution the term "United States" refers most often to the federal government and *not* to the 50 States. See the Guarantee Clause, for an excellent example which clearly distinguishes the "United States" (federal government) from the 50 States (also known as the several States).

Another place where this distinction is emphatically made is in the federal statute at 28 U.S.C. 1746 (Unsworn declarations under penalty of perjury). The term "United States of America" is conspicuously absent from all pertinent federal statutes.

The Qualifications Clauses are an exception to this general rule: the term "United States" in these Clauses means "States United". People v. De La Guerra, 40 Cal. 311, 377 (1870). Those who are qualified to make federal laws, and to serve in the Office of President, must be Citizens of ONE OF the United States of America. See 7 Words and Phrases 281 (1952); and Pannill v.

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Roanoke, 252 F. 910, 914, for a case that is definitive and dispositive on this point (federal citizens were not even contemplated when Article III was being drafted).

Setting aside these important and well documented exceptions, the "United States" must have the meaning assigned to this term in Article II of the Articles of Confederation: "... the United States, in Congress Assembled." It is a *singular* noun which refers to the federal government. The term "United States of America" is a *plural* noun which refers to the 50 States.

This Court will please take notice of the fact that Plaintiffs correctly refers to the United States of America as the Plaintiffs [*sic*] in His/Her PETITION.

Issue Number Two:
When the "United States" is a Plaintiff,
A *Constitutional* Court is Required

Plaintiff argues, and is prepared to present a comprehensive proof, that the "United States" can only prosecute a criminal case against a Citizen of ONE OF the United States of America in a *constitutional* court convened under Article III of the U.S. Constitution — read "judicial mode". That constitutional court, for more than two centuries, has been the district court of the United States ("DCUS").

The United States District Court ("USDC"), on the other hand, is a legislative court created under Article I and convened under Article IV of the U.S. Constitution — read "legislative mode".

In the latter mode, the USDC has no criminal jurisdiction whatsoever. When the "United States of America" are Plaintiffs in the USDC, that court is proceeding in *legislative* mode.

When the "United States" is Plaintiff in the DCUS, that court is proceeding in *judicial* mode.

The "United States" cannot convene the USDC in judicial mode, because the USDC is a legislative court which can only operate in legislative mode, and which cannot operate in judicial mode.

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Thus, the conclusion is unavoidable that federal government employees now claim to represent the "United States of America" in order to invoke *legislative* mode in the USDC, and in order to avoid *judicial* mode in a constitutional court.

Plaintiff's earnest search for the truth resulted in requiring Him/Her to wade through a difficult series of court cases that are decidedly confusing, contradictory and controversial. To illustrate the controversy now before us, in Northern Pipeline Company v. Marathon Pipe Line Company, 458 U.S. 50 (1982), as recently as 1982 *A.D.* the high Court's dissenters in that decision wrote as follows:

... [T]he plurality must go on to deal with what has been characterized as **one of the most confusing and controversial areas of constitutional law**. [458 U.S. 50, 93]

The concept of a legislative, or Art. I, court was introduced by an opinion authored by Chief Justice Marshall. Not only did he create the concept but at the same time **he started the theoretical controversy that has ever since surrounded the concept** .... [458 U.S. 50, 105]

[**bold** emphasis added]

In a concurring opinion, Justice Rehnquist echoed similar sentiments, as follows:

... [I]n an area of constitutional law such as that of "Art. III Courts," with its **frequently arcane distinctions and confusing precedents** .... [458 U.S. 50, 90]

The cases dealing with the authority of Congress to create courts other than by use of its power under Art. III **do not admit of easy synthesis**. [458 U.S. 50, 91]

[**bold** emphasis added]

It is utterly amazing to Plaintiff that the supreme Court has been unable to settle this controversy, particularly when so many years have passed since the controversy first erupted in 1828. See American Insurance v. 356 Bales of Cotton, 1 Pet. 511, 7 L.Ed. 242 (1828) (C.J. Marshall's

seminal ruling, still standing); and Balzac v. Porto Rico, 258 U.S. 298, 312 (1922) (The USDC is not a true United States court established under Article III.)

Plaintiff's breakthrough came in the course of receiving insights into the enormous and far-reaching implications of Williams v. United States, 289 U.S. 553 (1933). Without belaboring here the essential logic of that decision, it is obvious to Plaintiff that the following conclusion *must* be drawn from the holding in Williams:

The "United States" has standing to prosecute a criminal case against a Citizen of ONE OF the 50 States only when it proceeds in a constitutional court convened in judicial mode under Article III of the U.S. Constitution.

The U.S. Constitution provides the primary support for this conclusion: "The judicial Power shall extend ... to Controversies to which the United States shall be a Party." See 3:2:1.

Further support for this conclusion can be found in the Miscellaneous Provisions of the Act of June 25, 1948. At Section 17 in those Miscellaneous Provisions, the Act approved February 11, 1903, was amended to read as follows:

"Sec. 2. In every civil action brought in any **district court of the United States** under any of said Acts, wherein the **United States is complainant**, an appeal from the final judgment of the district court will lie only in the Supreme Court." [**bold** emphasis added]

Clearly, this statute recognizes that the "United States" is authorized to proceed as a Plaintiff in the district court of the United States -- a *constitutional* court.

Academic scholars have come to the very same conclusion. In the Harvard Law Review, author Henry M. Hart posed the following "dialectic":

Q: Does the Constitution give people any right to proceed or be proceeded against, in the first instance, in an inferior federal **constitutional court** rather than a federal **legislative court**?

A: **As to criminal defendants charged with offenses committed in one of the states, surely.**

["The Power of Congress to Limit the Jurisdiction]

[of Federal Courts: An Exercise in Dialectic,"]

[Henry M. Hart, Jr., 66 Harvard Law Review 1365 (1953)]

And, in the Encyclopedia of the American Constitution, UCLA Law Professor Emeritus Kenneth L. Karst writes:

In essence a legislative court is merely an administrative agency with an elegant name. While Congress surely has the power to transfer portions of the business of the federal judiciary to legislative courts, **a wholesale transfer of that business would work a fundamental change in the status of our independent judiciary and would seem vulnerable to constitutional attack.**

[Encyclopedia of the American Constitution]

[New York, MacMillan Publishing Co. (1986)]

[volume 3, page 1144]

It necessarily follows, therefore, that the federal government is attempting to proceed on the basis of several rebuttable assumptions, each of which is demonstrably false, to wit:

1. that the United States of America have standing to sue (when no federal statute grants them standing as such). Compare 28 U.S.C. §§ 1345, 1346.

2. that the U.S. Department of Justice and the Offices of the U.S. Attorney have powers of attorney to represent the United States of America (when they do not). See 28 U.S.C. §§ 530B (remedy for willful misrepresentation), and 547.

3. that the United States District Courts have criminal jurisdiction (when they do not). Compare 18 U.S.C. 3231 (which clearly vests criminal jurisdiction in the DCUS).

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4. that the United States District Courts ("USDC") can proceed in judicial mode when the United States of America are Party Plaintiffs (when the USDC are incapable of receiving or exercising the *judicial Power of the United States* in the first instance).

Issue Number Three:
The Act of June 25, 1948, 62 Stat. 869,
Is Vague and Therefore Unconstitutional

Plaintiff's tremble at the mere thought of challenging a comprehensive revision, codification, and enactment of all laws which have governed the conduct of the federal courts in this great nation for 53 years. However, a careful review of the relevant evidence, as found in various sections of Title 28, U.S.C., has rendered that challenge necessary and inevitable. This Court will please afford Plaintiffs, proceeding *In Propria Persona*, the latitude mandated by Haines v. Kerner, 404 U.S. 519, 520 (1972).

It is evident to Plaintiffs, and Plaintiffs hereby offers to prove: that the district courts of the United States ("DCUS") were never expressly abolished by Congress; that Congress knows how to abolish courts when it intends to do so; and, that the Act of June 25, 1948, attempted fraudulently to conceal the Article III district courts of the United States, and to create the false impressions that they had been re□defined as, replaced by, and/or rendered synonymous with, the United States District Courts. See 28 U.S.C. §§ 132, 451, 610. It is a cardinal rule of statutory construction that repeals by implication are decidedly not favored. U.S. v. United Continental Tuna, 425 U.S. 164, 168 (1976); U.S. v. Hicks (9th Cir. 1991).

As of this writing, Plaintiff's are assembling an exhaustive list of all statutes in Title 28 which expressly mention either the USDC, the DCUS, or both. Defendants are advised that the results of this research will be published forthwith.

In any Act of Congress, words importing the plural include the singular, and words importing the singular include and apply to several persons, parties, or things. 1 U.S.C. 1. Therefore, the rules

of statutory construction strictly bar intermingling of "United States District Courts" with "district courts of the United States".

On the other hand, the term "district courts" does embrace both the DCUS and the USDC, since there appears to be a hierarchical relationship between this term and the courts constituted by Chapter 5 of Title 28. See 28 U.S.C. 451.

Without enumerating all *other* essential steps in Plaintiff's proof here, this Court is respectfully requested to recognize, and take formal *judicial* notice, that the *ex post facto* restriction in the U.S. Constitution ("1:9:3") emphatically bars Congress from retroactively re-defining the meaning of "district court of the United States" as that term was used in all federal legislation *prior to* June 25, 1948 *A.D.* See, for example, the Sherman Antitrust Act, and the Securities and Exchange Act. Plaintiff's Immunity from *ex post facto* legislation is a fundamental Right. See Privileges and Immunities Clause ("4:2:1").

Moreover, in the opinions of recognized constitutional scholars, such as Justice Story, the Congress has affirmative *obligations* to create *and* to maintain constitutional district courts, proceeding in *judicial* mode. The reason for this is simple, if not immediately obvious:

The original jurisdiction of the U.S. Supreme Court is quite limited under Article III, as compared to its appellate jurisdiction under Article III. The Supreme Court's appellate jurisdiction under Article III embraces matters that arise under the Supremacy Clause (Constitution, Laws and Treaties of the United States). See Arising Under Clause at Article III, Section 2, Clause 1 ("3:2:1"), and 28 U.S.C. 1331 (Federal question).

Cases that arise under the Supremacy Clause, as mirrored by 3:2:1 and 28 U.S.C. 1331, would need to originate first in an *inferior constitutional* court, before those cases could ever reach the U.S. Supreme Court on appeal. The exact same argument can be extended to this Court's

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appellate jurisdiction: specifically, a criminal prosecution against a Citizen of ONE OF the United States of America must first originate in an *inferior constitutional* court, before such a case could ever reach the Ninth Circuit on appeal!

The conclusion is inescapable, therefore, that Congress must first create *constitutional* courts proceeding in *judicial* mode, and then it must also perpetuate them, in order to satisfy the Fifth Amendment. To do otherwise would constitute a clear violation of the Fifth Amendment, which mandates due process of law (among other things).

This mandate is also embodied in numerous provisions of the International Covenant on Civil and Political Rights, a United States treaty rendered supreme Law by the Supremacy Clause. See Article 14 in that Covenant, for example.

The entire thrust of that Covenant is to guarantee independent, impartial and qualified judicial officers presiding upon courts of competent jurisdiction (and not Star Chambers or other tribunals where summary proceedings are the norm, and where due process is not a fundamental Right but a *privilege* granted at the discretion of those tribunals).

Plaintiffs therefore enjoys a fundamental Immunity from summary criminal proceedings.

In pari materia, compare the language in Rules 201(c) and 201(d) of the Federal Rules of Evidence: the former is discretionary ("may"); the latter is mandatory ("shall").

Confer at "Fundamental right" in Black's Law Dictionary, Sixth Edition. (Plaintiff is protesting the Seventh Edition of Black's, because it has conspicuously omitted any definition of the term "United States" -- a term which figures prominently throughout federal laws and throughout the U.S. Constitution!)

The district courts of the United States ("DCUS") are *constitutional* courts vested by law with competent jurisdiction to entertain criminal prosecutions of Citizens of ONE OF the United

States of America. See 18 U.S.C. 3231. Statutes granting original jurisdiction to federal district courts must be strictly construed [numerous cites omitted here].

The United States District Courts ("USDC") are not constitutional courts vested by law with competent jurisdiction to entertain criminal prosecutions of those Citizens. Confer at "*Inclusio unius est exclusio alterius*" in Black's Sixth Edition.

To the extent that the Act of June 25, 1948, was written and enacted to justify or otherwise foster the assumption that the United States of America have standing to institute criminal proceedings in United States District Courts — courts that were *broadcasted* from the federal Territories into the several (48) States on June 25, 1948 *A.D.* -- that Act is demonstrably unconstitutional for exhibiting vagueness on this obviously important point.

The 50 States of the Union are not "United States Districts"; they are *judicial* districts! Federal *municipal* law does not operate, of its own force, inside *those* judicial districts. Even though the District of Columbia and Puerto Rico are likewise judicial districts, federal municipal law *can* operate there because neither is a Union State. 28 U.S.C. §§ 88, 119.

Nevertheless, federal municipal law is likewise bound by all restrictions in the U.S. Constitution, because the U.S. Constitution was expressly extended into D.C. in 1871, and into all federal Territories in 1873. See 16 Stat. 419, 426, Sec. 34; 18 Stat. 325, 333, Sec. 1891, respectively.

Plaintiffs alleges that the nomenclature "United States District", as found on the caption pages of all federal court pleadings, is now being used to trigger *legislative* mode without adequate notice to criminal defendants, in violation of the Fifth and Sixth Amendments. This dubious mechanism is called "silent judicial notice" [*sic*] -- surely a misnomer, if ever there was one. It would be entirely more accurate to call it "silent *legislative* notice", since the practice is now rampant within legislative courts, and the DCUS are currently vacant.

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But, has Congress been silent, or merely vague?

Vagueness, once fully documented *wherever* it occurs, will be shown to conflict *directly* with the stated legislative intent of the Act of June 25, 1948, to wit: "The provisions of title 28, Judiciary and Judicial Procedure, of the United States Code, set out in section 1 of this Act, ... **shall be construed as continuations of existing law** ...." Moreover, "**No loss of rights, interruption of jurisdiction**, or prejudice to matters pending in any of such courts on the effective date of this Act **shall result from its enactment**." [**bold** emphasis added] See Miscellaneous Provisions, Act of June 25, 1948, C. 646, sections 2 to 39, 62 Stat. 985 to 991, as amended.

In good faith, Plaintiff constructs these Miscellaneous Provisions to read: "No loss of Rights and no interruption of jurisdiction shall result from its enactment." If Congress had intended to abolish the DCUS, they would (and should) have said so. The period between 1789 *A.D.* and 1948 *A.D.* spans 159 years of judicial history! Hiding a herd of elephants under a rug would be easier than hiding the DCUS under a pretense. To reiterate an all important point: throughout America, repeals by implication (or magic carpets) are decidedly not favored. See United Continental Tuna and Hicks *supra*.

The law of jurisdiction is fundamental law, not allowing dubious intrusions of any kind.

The extra-legal system

The Extra-legal system is a fraud perpetuated by the American Bar Association and constituent enterprises such as the state bar association, state bars, county bar associations, and associations of so-called bar lawyers. The extra-legal system is conspicuous by that system's disregard for the rules promulgated by Congress as well as state legislatures and an open and venomous hatred of the Constitution and anyone who dares to assert Constitutionally protected authority. The extra-legal system is a racket where racketeering is defined as : (1). An

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association of persons in fact allied for a common purpose affecting interstate commerce, (2). One or more members of this association in fact have committed two or more acts of fraud or extortion, (3). The predicated acts of fraud or extortion result in damages to a business or property interest, and (4). The pattern of frauds is likely to continue. It is common knowledge that parties similarly situated to ." State Justice Institute, W.A. Drew Edmondson, Jim Petro, Deborah J. Groom, William F. Downes, Marsha J. Pechman, Robert J. Bryan, Lawrence K. Karlton, Franklin D. Burgess, Joe Heaton, Betty Montgomery, Bob Taft, First National Bank, John & Jane Doe, Rob McKenna, Bill Lockyer, Greg Abbott, Roy Cooper, CAN Surety, Westfield Insurance, and Gretchen C.F. Shappert will tell any lie, violate any rule, break any law, or commit any crime necessary to perfect their schemes of fraud and extortion.

The extra-legal system is founded in the beliefs that: (a) people who are not members of the bar are ignorant of the difference between the lawful processes of the legal system and the illicit sham legal processes of the extra-legal system, (b) Congress and the legislatures are packed with members or servants of the bar who have a vested interest in perpetuating the sham legal processes of the extra-legal system: (c) The "Fourth Branch of Government," the press, walks in fear of the extra-legal system apprehensive that publication of the fraudulent nature of the extra-legal system will result in retaliation, and (d) the majority of the voting public doesn't care about the high- level fraud, corruption and cover up or perceives a benefit from allowing the extra-legal system to continue. ." State Justice Institute, W.A. Drew Edmondson, Jim Petro, Deborah J. Groom, William F. Downes, Marsha J. Pechman, Robert J. Bryan, Lawrence K. Karlton, Franklin D. Burgess, Joe Heaton, Betty Montgomery, Bob Taft, First National Bank, John & Jane Doe, Rob McKenna, Bill Lockyer, Greg Abbott, Roy Cooper, CAN Surety, Westfield Insurance, and Gretchen C.F. Shappert and others similarly situated, routinely violate

18 U.S.C. δ δ 371, 1001, 1341, 1961, and 1962 as well as 26 U.S.C. δ 7214(a)(1)(2)(7)&(8) and the state's equivalents of these federal laws and do so with impunity.

As a result of a self dealing by those who are either members of or beholding to the bar and those who live in terror of the bars illicit power, an estimated 98-99% of the time, criminal and civil cases handled by the federal system are subject to special processing, the sham legal actions of the extra-legal system. No less of a percentage is frauds.

Verification of sham legal process festering in the court system

5:98-CV-1604, for the Northern District of Ohio Eastern Division
5-06-CV-1465, for the Northern District of Ohio
5-04-CV-180, for the Northern District of Ohio
5-06-CV-598, for the Northern District of Ohio
5:02-CV-967, for the Northern District of Ohio Eastern Division
00-03850, for the Northern District of Oklahoma Bankruptcy Court
02-CV-300, for the Northern District of Oklahoma
02-CV-609 for the Northern Federal District of Oklahoma
02-CV-674 for the Northern Federal District of Oklahoma
02-CV-701 for the Northern Federal District of Oklahoma
03-03088, for the Middle District of Florida Bankruptcy Court
03-364, for the District of Colorado
04-61722, for the Bankruptcy Court of Montana
04-CV-1065 for the District of New Jersey
04-CV- 2765 for the Middle District of Florida
04-CV-395, for the Northern District of Oklahoma
04-CV-5939, for the Eastern District of Pennsylvania

04-CV-769, for the Middle District of Wisconsin

04-MC-0044, for the Northern District of Oklahoma

05-CV-00182, for the District of Oregon

05-CV-98, for the Northern District of Oklahoma

1:04CV 2524, for the Northern District of Ohio

1:04-cv-01717, for the District of Columbia

2:04-CV-01179, for the District of Utah, General Division

2:04-CV-1178, for the District of Utah

3:00CR8, for the Western District of North Carolina

3:02-CV-0112G, for the Northern District of Texas

3:04-CV-1907, for the Northern Federal District of Texas

3:04-CV-607, for the Eastern District of Tennessee

3:04-CV-612, for the Eastern District of Tennessee

3-02CV-1585, for the Northern District of Texas

3-03CV-0387, for the Northern Federal District of Texas

4:04-CV-0253, for the Southern District of Indiana

4:05-CV-163 for the Northern District of Oklahoma

4:05-CV-3004, for the District of Nebraska

5:02-CV-148, for the Eastern Federal District of Texas

5:05-CV-0020, for the Eastern District of Arkansas

5:02 CV-063, for the Eastern Federal District of Texas

5:03 CV-23, for the Eastern Federal District of Texas

92-0196, for the District of Idaho

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98-0338, for the Northern District of Oklahoma Bankruptcy Court

C:05-1005, for the Northern District of Iowa

CIV-02-1586, for the Eastern Federal District of Oklahoma

CIV-03-150, for the Eastern District of Oklahoma

CIV-02-1327, for the Western Federal District of Oklahoma

CIV-02-421, for the Eastern Federal District of Oklahoma

CIV-04-1130, for the Western District of Oklahoma

CIV-05-1153, for the Western District of Oklahoma

CIV-05-165, for the Western District of Oklahoma

CIV-05-110, for the Western District of Oklahoma

CIV-96-1150, for the Western District of Oklahoma

CIV-98-1024, for the Western District of Oklahoma

CIV-06-652, for the Western District of Oklahoma

CIV-06-510, for the Western District of Oklahoma

CR-04-10023-01, for the District of Kansas

CR-123456789, for the District of Idaho

CV-4-2536, for the Western District of Washington

C-05-1074, for the Western District of Washington

MS-05-5034, for the Western District of Washington

04- 68810, for the District of Oregon

CV-4-2538, for the Western District of Washington

CV-N-03-0119, for the District of Nevada

F-05-0008, for the District of Alaska

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W-05-CV-00329, for the Western Federal District of Texas

The above and foregoing cases represent part of the estimated fifty million federal frauds just in the last twenty-five years where American citizens were subjected to sham legal process without recourse due to the fact that Congress, with a so-help-me-God-duty to remove the bad boys and girls who use federal venues for purposes for fraud and extortion, has spent two centuries looking skyward at the mischief of the courts. Even cursory review of the above and foregoing files demonstrate that all judges and circuit judges involved in these cases including the United States Supreme Court, proceed as if they know little or nothing about the law. No doubt, many of the involved judges such as the infamous James H. Payne and Claire Eagan are quite literally so dumb they are pathetic. For the most part, however, federal judges including magistrates and clerks, circuit court judges including law clerks and clerks, and the United States Supreme Court, definitely including clerks and law clerks, are simply imposing the unpublished rules of the extra-legal system over the published rule of law with the intent and the result of the bar controlling America's court for the illicit purpose of fraud and extortion including, whenever necessary, profiteering from the prison industry. A jury shall determine that the federal judiciary, from the bottom to the top is absolutely shamelessly corrupt and in fact down right evil.

INVOLUNTARY SERVITUDE AND PEONAGE

Summary:

Section 1584 of Title 18 makes it unlawful to hold a person in a condition of slavery, that is, a condition of compulsory service or labor against his/her will. A Section 1584 conviction requires that the victim be held against his/her will by actual force, threats of force, or threats of legal coercion. Section 1584 also prohibits compelling a person to work against his/her will by

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creating a "climate of fear" through the use of force, the threat of force, or the threat of legal coercion [i.e., If you don't work, I'll call the immigration officials.] which is sufficient to compel service against a person's will.

The offense is punishable by a range of imprisonment up to a term of ten years, depending upon the circumstances of the crime.

TITLE 18, U.S.C., SECTION 1584

Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined under this title or imprisoned not more than 10 years, or both.

Peonage

Summary:

Section 1581 of Title 18 makes it unlawful to hold a person in "debt servitude," or peonage, which is closely related to involuntary servitude. Section 1581 prohibits using force, the threat of force, or the threat of legal coercion to compel a person to work against his/her will. In addition, the victim's involuntary servitude must be tied to the payment of a debt.

The offense is punishable by a range of imprisonment up to a term of ten years, depending upon the circumstances of the crime.

TITLE 18, U.S.C., SECTION 1581

(a) Whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage, shall be fined under this title or imprisoned not more than 10 years, or both.

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(b) Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be liable to the penalties prescribed in **subsection (a).**

- Racketeering
- Substantive Due Process
- Fraud upon the court
- Privacy
- Misprision of Felony
- Practice of Law
- Solicitation, closed union monopoly
- Deprivation of Rights
- Perjury of Oath
- Fraud
- False swearing
- Intentional Infliction of Emotional Distress
- Trespass
- Judicial Orders that Create a Disputable Presumption
- False Arrest and Imprisonment
- Defamation
- Compelled Testimony/Evidence Production
- Malicious Prosecution
- Solicitation Conspiracy
- Perjury
- Subornation of Perjury
- Obstruction of Governmental or Judicial Administration
- Bribery
- Tampering with Witness
- Tampering with Physical Evidence
- Initiating False Reporting
- Menacing
- Kidnapping in the 1st Degree
- Coercion
- Sexual Abuse in the 1st Degree
- Using Children in the Display of Sexually Explicit Conduct
- Encouraging Child Sex Abuse in the first Degree
- Failure to Report Child Pornography
- Stalking
- Falsifying Business Records
- Violation of the Public Trust
- Violation of Constitutional Protected Rights and Civil Liberties.

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- Aiding and abetting
- Fleeing from justice
- **Interstate Compacts**

The United States Supreme Court (359 U.S. 275 at 285)

Interstate Compacts

Article I, section 10 of the United States Constitution grants states the authority to enter into an "agreement or compact with another state" with the consent of Congress. The constitution contains no restrictions on the subject matter of a compact and is silent about the process by which states may enter into compacts, with the exception of the required consent of Congress. ***The United States Supreme Court (359 U.S. 275 at 285) opined in 1959 that an interstate compact is a "contract" protected by the Constitution's contract clause forbidding a state legislature to enact a "law impairing the obligation of contracts."***

- Et al., this is not a complete record and we reserve the Right to Amend the record as necessary.

Brief in Support of Petition for Redress

Rely on the mandate of the Constitution of the United States that federal judges serve as such contingent on good behavior and well as the Code of Conduct for United States Judges, We the People petition for the removal of the William F. Downes et al based on of-record public corruption far exceeding the ethical standard, "A judge should avoid even the appearance of impropriety,"

Seemly countless records verify that the *Title 42 USC Chapter 113 State Justice Institute* are naught but servants of Bar License. *Title 42 USC Chapter 113 State Justice Institute* in there role as members of the Bar License have dedicated their lives to advancing the fraud and swindles of Bar License *Title 42 USC Chapter 113 State Justice Institute* have blatantly and with

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great repetition, in fact, without known exception where matters involve Pro se Litigants, shall have violated 18 USC δ 1341, 1961, 1962.

FEDERAL QUESTIONS

1. The Constitution grants the elected members of Congress the power to decide what "public policy" is.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

2. Congress has not incorporated any common-law immunities into the laws of this country.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

3. The common-law immunities referred to by the Justices of the Supreme Court were incorporated by Justices of the Supreme Court, but the Constitution does not grant the Justices of the Supreme Court the power to incorporate common-law immunities or anything else into the laws of the United States. Therefore, lawful authority did not incorporate the common-law immunities incorporated by the Justices of the Supreme Court. Thus, the common-law immunities granted to the Government by the Supreme Court are unconstitutional. It is that simple!

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

4. Supreme Court Justice Brandeis points out in the 1938 case of Erie R. v. Tompkins there is no federal common-law. Obviously, federal judges cannot base decisions on something that does not exist!

YOUR ANSWER: _____ ADMIT _____ DENY

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CLARIFICATION_____.

5. In the case of Marbury v. Madison, Mr. Chief Justice Marshall makes it clear that sovereign, absolute, and qualified immunities cannot be based on common-law and that these immunities do not exist in the United States.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

6, If one of the heads of departments commits any illegal act, under color of his office, by which an individual sustains an injury, it cannot be pretended that his office alone exempts him from being sued in the ordinary mode of proceeding, and being compelled to obey the judgment of the law."

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

7, We the People have the sovereignty; and the Government and Government officials do not have sovereign immunity.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

8. The Constitution explicitly guarantees, in the First Amendment, that each citizen will always have the Right and the opportunity to have his grievance against the Government heard. A United States citizen's Right to sue the Government for wrongs committed is a right retained by the People that has never been surrendered to the Government.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

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9, When a citizen of the United States sues the Government, the Constitution forbids the Government from using the defense of sovereign immunity.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

10. It is the expressed will of the People of the United States, stated plainly and specifically in the First Amendment to the Constitution of the United States, that the Government can be sued by an citizen.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

11. Assistant United States Attorneys go into federal courts on behalf of the Government and advocate sovereign immunity. The argument is nothing more than a request by the Government to be allowed to continue the Government's unconstitutional behavior.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

12, Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

13, The implementation of immunity defenses by Federal judges for the Government, or for Government officials, to suits brought against the Government by citizens of the United States has caused a tear in the cloth that is the foundation of this nation and infringes on a citizen's constitutional rights and freedoms.

YOUR ANSWER: _____ ADMIT _____ DENY

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CLARIFICATION_____.

14. When a citizen of the United States sues a government contractor, a government contractor cannot use an immunity that does not exist to defeat the lawsuit!

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

15. Federal judges, in establishing the government contractor defense, have exercised authority beyond that granted to them in the Constitution.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

16. The only purposes served by sovereign, absolute, qualified, and government contractor immunity are to (A) subject citizens to the abuses possible when Government officials enjoy unbridled discretion, (B) exert unlawful pressure on citizens not to go forward with grievances against the Government, (C) create a barrier behind which malicious Government officials go undetected and unpunished, and (D) allow Government officials to commit, perpetuate, condone, and conceal unlawful acts.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

17. The Government simply protects its unconstitutional behavior by throwing up the sovereign immunity shield — all in the name of good efficient government. Such behavior from the Government is not for the benefit of the People.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

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18. To bring the Government into accord with the Constitution, Congress must declare that the First Amendment prohibits the Government from using the defense of sovereign immunity against suits brought by citizens and that the Constitution vests Congress and not Federal judges with the authority to establish any immunities necessary for Government officials.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

19.As a condition for accepting federal funding under Title IV-E and Title IV-B and other Federal funding streams, of the Fifty States and other agencies have agreed to waive jurisdiction and immunity.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

19. Congress has expressly abrogated state immunity for claims arising under four important federal laws enacted under the Spending Clause. 42 U.S.C. § 2000d-7 abrogates state immunity for suits under Title VI of the Civil Rights Act of 1962 (discrimination based on race, religion and ethnicity), the Age Discrimination Act, Title IX of the Education Amendments of 1972 (gender discrimination in education), and Section 504 of the Rehabilitation Act of 1974 (discrimination based on disability). Other federal statutes contain abrogation provisions, so each statute should be examined to determine whether they contain language which can be construed to impose a consent to suit against the state as a condition of accepting federal money.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

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20. Laws enacted under the Spending Clause which expressly waive state immunity have a wide applicability to state governments. Although the four laws covered by abrogation in § 2000d-7 apply only to programs that are recipients of federal funds, almost all state agencies receiving federal funds should be covered by these laws. At least five Circuit Courts of Appeal have held that Section 504 of the Rehabilitation Act constitutionally abrogates state 11th Amendment immunity. See Stanley v. Litscher, 213 F. 3d 340 (7th Cir. 2000), and cases cited therein. Other cases upholding waivers under the Spending Clause

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

21. While a private citizen cannot ordinarily be held liable under § 1983 because that statute requires action under color of state law, if a private citizen conspires with a state actor, then the private citizen is subject to § 1983 liability.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

22. While defendants' claim that plaintiff's allegations are too vague to withstand dismissal under 12(b)(6), plaintiff's has alleged all of the necessary facts: the who, what, when, why and how. No more is required at this stage

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

23. CAN THE STATE SHIELD A "STATE ACTOR"FROM LIABILITY UNDER SECTION 1983?

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

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24. DOES THE PROHIBITIONS AND RESTRICTIONS PLACED ON "GOVERNMENT OFFICIALS" BY THE U.S. CONSTITUTION LIMITED TO ONE TYPE OR KIND OF OFFICIAL OR DOES THOSE PROHIBITIONS AND RESTRICTIONS APPLY TO ANY GOVERNMENT OFFICIAL?

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

25. WHEN A STATE INITIATES AN INVESTAGATION AND AN AMERICAN BECOMES THE TARGET OF THAT INVESTAGTION BY THE STATE, DOES THE STATE HAVE THE AUTHORITY AND JURISDICTION TO AMEND, ABROGATE, ABRIDGE, LIMIT, MODIFY, DENY OR CHOOSE OR SELECT WHAT CONSTITUTIONAL RIGHTS THAT AMERICAN HAS OR DOES NOT HAVE WHETHER THAT AMERICAN IS A PARENT VS. A NON-PARENT EVEN THOUGH THEY ALLEGEDLY COMMITTED THE SAME CRIME?

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

26. WOULD A STATE BE VIOLATING THE 1ST AND 14TH AMENDMENT OF THE U.S. CONSTITUTION BY PLACING INNOCENT AMERICANS ON A LIST CALLED THE "CENTRAL REGISTRY" WHICH IS AVAILABLE TO THE PUBLIC AND LAW ENFORCEMENT, WHERE PARENTS HAVE NEVER BEEN ADJUDICATED BY ANY COURT NEGLECTFUL OR ABUSIVE THUS "BLACK BALLING" AND/OR "BLACK LISTING" AMERICANS?

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

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27. . IS INVENTORYING THE CONTENTS OF A "PRIVATE" CITIZEN'S KITCHEN CABINETS (I.E. FOOD) OR INSPECTING THE HOMES OF AMERICANS BY "GOVERNMENT OFFICIALS" UNREASONABLE, ARBITRARY AND A VIOLATION OF THE 4TH AND 14TH AMENDMENT AS WELL AS THE WARRANT CLAUSE is this a violation of privacy?

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

29.. IS THERE A CLASS-BASED BIAS AND ANIMUS PERPETRATED BY GOVERNMENT OFFICIALS, ATTORNEY GENERALS AND JUDGES IN THAT THERE ARE TWO SETS OF RULES AND STANDARDS WHEN IT COMES TO PARENTS VS. NON-PARENTS WHERE THE GOVERNMENT GETS TO CHOOSE WHAT RIGHTS ONE AMERICAN HAS AND THE OTHER DOES NOT HAVE?

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____

30. State income tax shall be withheld only on the entire compensation of members of the Armed Forces and Federal and State employees.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

31. The federal income tax under Subtitles A through C only applies inside the federal zone and most people don't live in the federal zone.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

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32. Does the Constitution give people any right to proceed or be proceeded against, in the first instance, in an inferior federal **constitutional court** rather than a federal **legislative court**?

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

33. For the court to have jurisdiction is not the accused required to be properly identified with no room for mistaken identity before the court has jurisdiction and the accused to receive due process.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

34. Is it not a requirement for the court to have jurisdiction for the offense to be identified by its proper or common name.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

35. A number is insufficient for a citizen to stand in jeopardy of criminal sanctions for alleged violations of statutes and regulations for the government could bring new and different charges at any time.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____

36. Facts must be stated and conclusions can not be considered in the determination of probable cause.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

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37. For a court to have proper jurisdiction to meet due process some positive identifiable person (human being) must be the party to accuse.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

38. Admit that one of the important goals of the Constitution is to remove the American People from the rule of arbitrary power.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

39. Admit that you as a federal judge have a fiduciary duty towards the litigants who appear in front of you.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

40. Admit or deny that silence on the above issues harms our Constitutional right to life, liberty and property and violates the fiduciary duty that you have to us as litigants appearing before you.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

41. Admit or deny that all "presumptions" violate due process under the Constitution when employed against a person protected by the Bill of Rights, if the result of the presumption injures constitutionally protected rights.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

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42. Anyone like Millie Leslie can falsely accuse without any risk or persons like Judge Joe Heaton declares it is not a constitutional issue to file false affidavits under the penalty of perjury.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

43. An accuser must comply with the law, procedure and forms when bringing charges to comply with the mandated elements of jurisdiction to have a valid charge.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

44. Is it not a requirement for a court to be of competent jurisdiction to have valid process according to the Constitution from which laws are created.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

45. If judge Adams is the jury then in Rod Class' case 506CV 1465, who asked for a trial by jury was his due process violated.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

46. The Sixteenth Amendment was ratified.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

47. A violation of due process of the Plaintiff's rights means the Plaintiffs can put a lien against the persons who aid and abet known criminals .

YOUR ANSWER: _____ ADMIT _____ DENY

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CLARIFICATION_____.

48. Does not an affidavit have the power to open up any case according to Hazel-Atlas Glass Co.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

49. Hazel- Atlas Glass Co. can not be over turned because it is a Supreme Court Holding.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

50. Does not the Congressional intent of the law supercede policies and procedures in the court room.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

51. The state and the federal courts can not grant divorces.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

52. Is it not written that within 70 days from the motion to dismiss that there must be a trial within 70 days.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

53. Is it not a Constitutional requirement for a state to be ratified by the people of the state to become a state.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

54. Is it not a requirement for the Governor to sign the contract for the intent of federal funding.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

55. Since President Bill Clinton signed document the International Criminal Court for crimes against humanity and civil rights violations is it not an option for citizens to take the issues to the International Criminal Court to clean up our government who violate due process on its own citizens.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

56. The attorneys can put liens on property without judges orders knowing its fraud upon the court.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

57. Congress never did approve circuit courts.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

58. It is a fact that the judicial system receives federal funding and federal grants from a private organization known as State Justice Institution which was created by federal law [Title 42 USC Chapter 113] to create policies to enact profiling against the citizens to violate substantial due process by classifying them as terrorists for failing to hire Bar members.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

59. Fourteenth Amendment Section 3 citizens who rescinded their office in 1868 still hold vacant offices today.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

60. The Treaty for Puget Sound Agricultural Company still in effect today.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

61. Judge William F. Downes lives in the Federal District of Oklahoma.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

62. Grand jury members do not need to reside in the federal district to sit on the jury.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

63. An office is vacant if the person holding the office does not possess an oath of office and a personal bond.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

64. The Rooker-Feldman Doctrine was made from the bench and not Congress.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

65. All courts must take judicial notice of a Land Patent and Land Patents can not be collaterally attacked.

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

66. Neither the Fifty Supreme Courts, nor any tribunal of any nature, nor any individual making inquiry in any capacity known to law or known in public policy, whether in contemplation of the Constitution of The Fifty States, can, with any degree of candor or integrity articulate how Oklahoma State Statute Five, Chapter One, App. One, Articles One and Two do not come into direct conflict with the Oklahoma Constitution at Section IV-1: Departments of government – Separation and distinction. *The powers of the government of the Fifty States shall be divided into three separate departments: The Legislative, Executive, and Judicial; and except as provided in this Constitution, the Legislative, Executive, and Judicial departments of government shall be separate and distinct, and neither shall exercise the powers properly belonging to either of the others.*

YOUR ANSWER: _____ ADMIT _____ DENY

CLARIFICATION_____.

Any one of the above questions would be a substantial due process violation

Bar License

As articulated in great detail in the report of the Manhattan Policy Institute, Trial Lawyers, Inc. A Report On the Lawsuit Industry In America, 2003, www.manhattan-institute.org, Bar license have scammed the American People in sum in excess of three Trillion dollars, ($3,000,000,000.00+) using sham legal process accomplished by horrendously repetitive frauds designed to make money for agents and servants of Bar License, Inc. and the people, the Constitution, and Justice be damned.

Exerpts from report of the Manhattan Policy Institute, Trial Lawyers, Inc. A Report on the Lawsuit Industry in America, 2003, www.manhattan-institute.org: Unlike the major

corporations in our regular market economy-it remains financially opaque (the lawsuit industry). Whereas public corporations must disclose their financials in 10-Ks according to SEC regulations, bar licenses practice in private partnerships that, under the guise of attorney-client privilege, have shielded their financials from public scrutiny. Total tort costs today exceed $200 billion annually, or more than 2% of America's domestic product – a significantly higher percentage than in any other developed nation. Even as the economy has stagnated and the stock market has plunged, the lawsuit industry's have continued to skyrocket. The public tends not to appreciate that the litigation industry is nothing but *big business*. Bar Licenses might well be the most profitable business in the world. The biggest difference between the lawsuit industry and most other industries is that Bar Licenses is in a *noncompetitive market* and that its takings are necessarily zero-sum, since **the industry involves redistribution rather than free exchange.** (They have no investment in plant, inventory, or equipment, and very little labor cost.) The lawsuit industry is slowly creeping into almost every aspect of American life. The national economy struggled again in 2002, as the stock market declined more than 20%, retail sales weakened, and businesses put off new investments. But the lawsuit industry proved resilient, and Bar Licenses recorded a banner year. Free from the threat of antitrust actions, which have never been brought against the lawsuit industry, the industry is frequently organized into cartels. The lawsuit industry even has its own venture capitalists - investors who back firms filing enormous, speculative class action suits with the hope that there will be rich rewards somewhere down the road – and its own secondary financial market, where shares in future legal fees are bought and sold. The impact of predatory litigation is staggering. Asbestos litigation alone has driven 67 companies bankrupt, including many that never made or installed asbestos, costing tens of thousands of jobs and soaking up billions of dollars in potential investment capital. More and

more, the industry resembles a *racket* designed to do little more than advance the incomes and interests of its members – everyone else be damned. **Bar Licenses are truly lucrative – and dangerous – racket.** Once upon a time, the average person blanched at lawyer fees that reached upwards of $500 an hour at many of the best firms. But those high hourly fees are chump change compared with what Bar Licenses are raking in these days. From tobacco settlements to asbestos litigation to class action suits, the industry now boasts fees that can range as high as an astounding $30,000 an hour, turning some members of Bar Licenses into overnight billionaires and providing the capital to bankroll new lawsuit ventures into new markets. Regardless of one's view about the merits of the suits, the mega-fees from the 1998 tobacco settlement were nothing but egregious. Some 300 lawyers from 86 firms will pocket as much as $30 billion over the next 25 years! Class members in a lawsuit against Toshiba for defective laptop compute collected between $100 and $443 in cash and coupons. The take for Bar Licenses: $148 million. In one Texas case, Lawyers sued two auto insurers for over-billing because insurers rounded up premium bills to the next dollar (a practice that was sanctioned by the state insurance department) and pocketed almost $11 million; policyholders got a paltry $5.50 each. In November of 1999, an Illinois judge awarded a national class of plaintiffs $1.2 billion (yes billion, the big B) in a lawsuit against State Farm Insurance. State Farm had allegedly been "fraudulent" in authorizing the use of generic parts in automobile repairs, even though using generic parts was not only allowed by but actually required by some states to reduce insurance costs. The local Illinois judge thus unilaterally overrode the considered policy decisions of many other states' elected officials. (How's that violating the separation of powers?) Perhaps nowhere are class action suits more pervasive --or more pernicious – than the securities industry. **Those actions merely redistribute wealth from one class of shareholders to another.** As former

secretary of labor Robert Reich has noted," The era of big government may be over, but the era of regulation through litigation has just begun."

How Bar Licenses run a racket using America's courts

The First Amendment and the Ninth Amendment of the United States Constitution are illustrative of American Citizens' God-given, Constitutionally reserved right to petition the government including meaningful access to court. The American court system is controlled, to a high degree, by Bar Licenses. Bar Licenses have usurped lawmaking powers of Congress, supplanted the Constitution, and deprived the American people of Constitutionally secured rights by compelling, through illicit means, the performance of virtually all judges, who, responsive to Bar Licenses control, operate as a government above government in contravention of the United States Constitution, the laws and rules promulgated by Congress, and even the Court's own common law authorities. Bar Licenses control of America's courts is, by measure of the Constitution, clearly treasonous in the best light; in any light, surrendering control of America to Bar Licenses control is quite literally racketeering.

The steps of Bar Licenses rule: (1). Citizens are faced with a choice of being deprived of meaningful access to courts or forced patronage of Bar Licenses. (2). Regardless, proceedings in America's courts, including federal district courts, are conducted according to the unpublished and secret private prior agreements wherein members of Bar Licenses circumvent the Constitution, disregard the laws and rules promulgated by Congress and the legislatures, and decide all questions in accordance with the parameters of determining how much money with the case and how Bar Licenses can exact the most money with the least amount of effort. (3). The proceedings of the lower courts, certainly including the federal district courts, are determined not based on competent testimony or authenticated evidence, and not by a trial on the merits, but by

Bar Licenses jointly agreed to conclusions and theories about matters with the concerns of determining how much money is involved in the case and how Bar Licenses can get the most amount of money with the least amount of effort. (4). Citizens denied meaningful access to court, whether proceeding on their own or through attornment to a member of Bar Licenses agents including law clerks, clerks, and appeals court judges, certainly including federal circuit court judges, who cohesively rig appeals. THIS ABUSE WOULD NOT BE POSSIBLE ABSENT A GROUP ACTING PURELY AS LACKEYS FOR Bar Licenses.

To reiterate how Bar Licenses turned the American court system into a literal racket, treasonous in the best light imaginable, one must follow the following flowchart: (1). The founding fathers blessed American with a highly substantial foundation document shortly after the American War of Independence. (2). Even cursory reading of the Constitution of the Constitution of the United States reveals the Constitution through the Bill of Rights is of two-fold but not duplicitous purpose: (a). to define the machinery of American national government, and (b)to protect the God-given rights of the people from unwarranted trespass by the federal government.(3). Bar Licenses is not a Constitutional creation nor a creature of the federal statute; thus being *ultra vires,* Bar Licenses, is on legally limited footing for the providence of legal services in a free-market economy. (4). Realizing there is no currency in allowing Citizens to settle their own differences in the freely accessible courts of a Constitutional Republic, Bar License, machinated control over America's courts by saturating not only the judicial branch of Government but the legislative and executive branches as well with Bar License member apparently sworn to the blood and death oath of secret societies but certainly allied with the ***anti-free-market*** ideals of (A) controlling all process, legal, legislation, and executive for purposes of (B). Determining how much money was available in any given situation and (C) scheming to

obtain for Bar License members the most amount of money with the least amount of effort. The usurpation happens like a hydrogen sulfide gas poisoning to death parties unaware of the silent, odorless, tasteless, and unseen power of the great evil. The lapse of moral resolve was allowing Bar License to (I) Infest the judiciary to the extent of being wholly and totally synonymous with the judiciary and then (II) To violate Constitutional Mandates for separation of Powers and the system of checks and balances. No one can say with any degree of candor, that permitting Bar License to declare themselves to be synonymous with the judicial branch of Government yet fully privileged to in both the executive and legislative branches of Government is anything short of ruinous to the nature, purpose, and effect of the Constitution. No sane and responsible person would conclude that allowing members of one branch of Government to simultaneously serve in another branch of Government would **not** be violative of the Constitutions mandate for the separation of Powers, and neither would any sane and rational person believe that members of a secret society could be trusted to serve as a check and balance over themselves.

Why it is likely true that 98% of all civil judgments including the so-called judgments of the federal district courts are frauds in violation of Title 18 USC δ 371, 1001et seq., 1341, 1961 & 1962-the so-called judgments obtained not under authority of the *Federal Rule of Civil Procedure* and the *Federal Rule of Evidence* but by private prior agreement between members of Bar License. Including judges who collude to determine how much money is in the case and how the most money can be defrauded from the parties with the least amount of effort under fraud that the judges are adjudicating claims under the rule of Law when most judges have been cheating Citizens for so long through sham legal process that they no longer know anything about rules (IF THEY EVER DID) and are only cognizant of the unwritten rules used for purpose of fraud and extortion. The reason why Bar License ha turned the courts into the largest,

most ruthless, and dangerous racket ever conceived and ever dedicated in the history of the world is a total lack of judicial accountability. Organs established to review judicial misconduct are of bar licensed members benefits to make sure that the largest, most ruthless and most dangerous racket in the history of the world continues unabaited.

Bar Licensed fraud, step by step

1. Parties file lawsuits.
2. Judges acting according not to the mandates of the Constituion, oaths, or the published rules of court such as Federal Rules of Civil Procedure and the Federal Rules of Evidence but by the private, unwritten rules of bar licensed members render extra- legal, extra-judicial decisions intended to exact the most money from parties with the least amount of effort. Bar Licensed members acts without regard to justice by any definition.
3. These so- called judgments are defective because they are not based on *competent testimony and authenticated evidence,* and in fact, agents of bar licensed members impersonating judges ***commonly disregard competent testimony and authenticated evidence.*** The Bar licensed agents judges consider only the conclusions of the other bar licensed business associates. These so called judgments are a compound fraud as judges are deprived of judicial power to use summary proceedings to determine the facts of the case.
4. Appeals of the fraud perpetrated through the sham legal process are fixed. The appellate courts, with full knowledge and complicity of federal circuit judges, use a network of clerks and law clerks to subject the appeals to special handling. The appeal will be

affirmed merely regurgitating the frauds of bar licensed members from the court below. The appeal will contravene the constitution's common law mandate for adherence to the rule of precedent. In other words, the rigged appealed will reverse the precedential authorities. To cover up this fraud, the appeal will be marked "not for publication". The Internet has exposed the wholesale, daily mischief of the appellate courts. The practice of the making of the decisions of the appeals courts "not for publication" where millions have daily access via the internet and cite the reversals of the precedent has increased the chaos of the court system rendering a system that is totally broken and can only be remedies by ending the practice "not for publication" subterfuge, vacating all "not for publication" decisions of all appellate courts as frauds, and prosecuting all clerks, law clerks, and appellate court judges who have participated in the "not for publication scam."

5. If the person has the tenacity to take their case to the United States Supreme Court, they encounter a rigorous and petty petitioning system, which because of the high cost and aggravation involved in preparing the petition, is intended to make more money for bar licensed members. Without known exception, all pro se petitions are dealt with fraudulently by the Supreme Court.

6. How the United States Supreme Court works: clerks and law clerks in the United States Supreme Court, operating in secrecy, commit fraud by misrepresenting the issues raised in the petition. The solution will be achieved by: (1) Make all records of the United States Supreme Court including the clerk's summary and the clerk's recommendation, public records. Is it not true that operating according to secret law is the antithesis of a Constitutional Republic? (2) Require mandatory review of all circuit court decisions

which reverse a precedent of the United States Supreme Court, coupled with the determinations of the circuit court judges who have not explained in detail, the necessity for the proposed change in existing law.

7. Complaints about judges are subjected to fraudulent handling. Judicial power is synonymous with *subject matter jurisdiction.* Judges are deprived of subject matter jurisdiction when the judge deprives a party of due process or willfully accedes to fraud. Administrative review including the patently criminal organization, The Administrative Office of the U.S. Courts, simply cover up the complaints about judges by calling everything that a judge does short of murder or rape a "judicial act". The solution is to require termination of all judges who violate the constitution's mandate for due process and/or willfully accede to fraud and to criminally prosecute all administrative officers who have covered up judges crimes by simply falsely claiming that their willful and intentional violations of Title 18 U.S.C. δδ 1341, 1961, and 1962 are within their "judicial capacity.".

8. Complete reformation and restoration of the American Republic will require recognition that bar licensed members is nothing more and nothing less than a syndicate organized crime requiring the ordered dissolution of bar licensed members including judges who have violated Title 18 U.S.C. δδ 1341, 1961, and 1962, requiring that all judges resign their membership in all non religious organizations during their term of service, and vacating all judgments obtained through the judges who have a vested interest in the outcome of the proceedings by virtue of bar licensed memberships.

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JUDICIAL NOTICE

COMES NOW Eddie L. Andrews, Rod Class, Angela S. Andrews, Carl weston, Richard H. Andrews, Dwight L. Class, Maria Janet Moffit , Sherwood T. Rodrigues, John and Jane Doe American Citizen, Pro-se, and Plaintiff's, non-licensed attorney litigant, the undersigned, and now gives Notice to the court;

NOTICED the court is now a Judicial, and not an administrative, proceeding, and

FURTHER NOTICED said Plaintiff's, is a Citizen, one who retains full Constitutional Rights and enjoys the benefits thereof, and FURTHER NOTICED, FAIR WARNING, NOT AS A THREAT, NOTICE pursuant to United States v. Lanier on certiorari No. 95-1717, is hereby given each member of the Defendant's party.

Conclusion

Whereas this court shall determine that at certain times subsequent to the Legislative Enactment of Oklahoma State Statute Five, Chapter One, App. One, Articles One and Two the governor of Oklahoma was a member in good standing of the Oklahoma Bar Association, and the Legislature was composed substantially of members of the Oklahoma Bar Association, the Oklahoma Supreme Court has a non-discretionary duty to declare Oklahoma State Statute Five, Chapter One, App. One, Articles One and Two unconstitutional. To conclude that Oklahoma State Statue Five, Chapter One, App. One, Articles One and Two are constitutional construes law to absurdity and renders all laws passed by the legislature and ratified by the governor since the inception of Oklahoma State Statute Five, Chapter One, App. One, Articles One and Two unconstitutional for violation of the clear mandate for separation of powers.

Remedy sought

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To restore all fifty states to a constitutional republic as a political sub-unit of the constitutional republic *The United States of America*, this court should declare including but not limited to Oklahoma State Statute Five, Chapter One, App. One, Articles One and Two as facially unconstitutional and honestly acknowledge that the Oklahoma Bar Association is nothing more or less than just another private, commercial business enterprise and depriving the Oklahoma Bar Association of alleged sovereign immunity and further ending the Oklahoma Bar Association's presumption of control and monopoly over Oklahoma courts limiting courts' ability to make inquiry into qualification to practice law to subject matter where competency of counsel is a cause for appeal and then such inquiry should be meaningful and not merely inquiry as to whether the attorney is a member of a closed union monopoly bar association with judges that solicit for them. The solution, and the only solution, is to investigate willful violation of Title 18 U.S.C. δ 1341, 1961, and 1962 by judges, including federal district judges and federal circuit judges and to remove from office and prosecute every single judge who has violated Title 18 U.S.C. δ 1341, 1961, and 1962. This remedy is the only means to save America from the nihilism, anarchy, and chaos fomented by bar licensed members. A jury's determination that State Justice Institute, W.A. Drew Edmondson, Jim Petro, Deborah J. Groom, William F. Downes, Marsha J. Pechman, Robert J. Bryan, Lawrence K. Karlton, Franklin D. Burgess, Joe Heaton, Betty Montgomery, Bob Taft, First National Bank, John & Jane Doe, Rob McKenna, Bill Lockyer, Greg Abbott, Roy Cooper, CAN Surety, Westfield Insurance, and Gretchen C.F. Shappert and all others similarly situated are : (1) An association in fact affecting interstate commerce, (2) Have committed two or more infractions of 18 U.S.C. δδ 1341, 1961, or 1962, (3) Have damaged the business or property interests of , and We the People Eddie L. Andrews, Rodney Class, Angela S. Andrews, Richard Andrews, Carl Weston , Dwight L. Class, Maria Janet Moffit

,Sherwood T. Rodrigues ,John & Jane Doe and all others similarly situated (4) If unabated, the mischief of State Justice Institute, W.A. Drew Edmondson, Jim Petro, Deborah J. Groom, William F. Downes, Marsha J. Pechman, Robert J. Bryan, Lawrence K. Karlton, Franklin D. Burgess, Joe Heaton, Betty Montgomery, Bob Taft, First National Bank, John & Jane Doe, Rob McKenna, Bill Lockyer, Greg Abbott, Roy Cooper, CAN Surety, Westfield Insurance, and Gretchen C.F. Shappert and all others similarly situated is likely to continue, warrants: (1) This court's order of dissolution compelling State Justice Institute, W.A. Drew Edmondson, Jim Petro, Deborah J. Groom, William F. Downes, Marsha J. Pechman, Robert J. Bryan, Lawrence K. Karlton, Franklin D. Burgess, Joe Heaton, Betty Montgomery, Bob Taft, First National Bank, John & Jane Doe, Rob McKenna, Bill Lockyer, Greg Abbott, Roy Cooper, CAN Surety, Westfield Insurance, and Gretchen C.F. Shappert and all others similarly situated to cease and desist any association with the federal court system whatsoever and, (2) Payment in the sum of damages to We the People Eddie L. Andrews. Rodney Class, Angela S. Andrews, Richard Andrews, Carl Weston , Dwight L. Class, Maria Janet Moffit ,Sherwood T. Rodrigues ,John & Jane Doe and all others similarly situated treble what the jury shall determine damages We the People Eddie L. Andrews, Rodney Class, Angela S. Andrews, Richard Andrews, Carl Weston , Dwight L. Class, Maria Janet Moffit ,Sherwood T. Rodrigues, John & Jane Doe and all others similarly situated to business and property interests are.

The federal Qui Tam case will be filed to the Appropriations Committee appropriate individuals and will be added to the record (False Claims Act).

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